00048724

Digitized with financial assistance from the
Government of Maharashtra
on 02 January, 2016

A

DIGEST

OF

HINDU LAW,

ON

CONTRACTS AND SUCCESSIONS:

WITH A

48724

COMMENTARY

By JAGANNÁT'HA TERCAPANCHÁNANA.

Translated from the Original SANSCRIT,

By H. T. COLEBROOKE, ESQUIRE,

JUDGE OF MIRZAPORE, RESIDENT AT THE COURT OF BERAR,

AND MEMBER OF THE SOCIETY INSTITUTED IN BENGAL FOR INQUIRING INTO THE HISTORY, ANTIQUITIES, THE ARTS, SCIENCES AND LITERATURE OF ASIA.

IN THREE VOLUMES.

VOL. II.

CALCUTTA,

PRINTED AT THE HONOURABLE COMPANY'S PRESS.

LONDON,

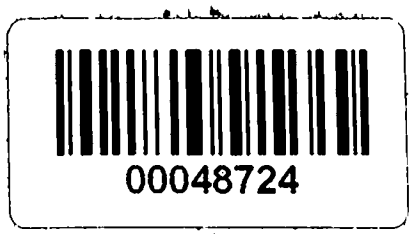
REPRINTED FOR J. DEBRETT, PICCADILLY,

BY WILSON AND CO. ORIENTAL PRESS, WILD COURT.

1801.

LIBRARY OF THE

ORI 349.54
Tex/Dig
48724



CONTENTS OF VOL. II.

CHAP. III. On Concerns among Partners. (65)

Page

Sect. I. On Partnerſhip in Trade and Adventure. The contributions and ſhares of partners regulated by their proportions of the capital or by ſpecial agreement. Diſputes among them may be arbitrated by the reſt of the partners. An accuſation of fraud tried by ordeal. Accidental loſs borne by all the partners. What is loſt by the fault of one muſt be made good by him. A partner claims a tenth part of property ſaved by him. A fraudulent partner expelled without profit. A ſubſtitute appointed to act for a diſabled partner. Care of the effects belonging to a deceaſed trader. A proportion may be reſerved by the king. If no heir appear, the king may take the eſcheat

Sect. II. On Partnerſhip among Prieſts. Another muſt act for a prieſt diſabled. Share of a prieſt who abandons work begun. Diſtribution of fees among prieſts. Rules concerning a prieſt who abſents himſelf. Fines for deſertion of prieſts. Officiating prieſts are hereditary, appointed for that turn, or voluntary. Diſtribution of fees among partners 31

Sect. III. On Partnerſhip in Money-lending. The act of one partner is the act of all. Penalty for refuſing to join in the demand of money jointly lent. Partnerſhip in agriculture. Partnerſhip in manufacture, arts, and ſo forth. Pay diſtributed according to the ſkill and rank of the artiſts. Partnerſhip in plunder. Robbers reſtrained. The law of partnerſhip extended to all caſes 66

CHAP. IV. On Subtraction of Gift. (67)

Sect. I. On unalienable Property, one of four topics included in this title. Gifts for religious uſes are irrevocable. Eight or more things are unalienable. Queſtion on a donation by one of ſeveral coparceners: they may give or ſell their own ſhares.

Page

A man may not give or ſell his wife, ſon, or whole eſtate, without conſent of parties. Digreſſion on the gift of a ſon for adoption. Queſtion on the alienation of the whole eſtate. Immoveables and ſlaves attached to the glebe ſhould not be aliened. Digreſſion on ſucceſſion of kings. An eſtate may be given away in diſtreſs. Queſtion on a thing promiſed..... 94

Sect. II. On other topics included in this title. —— Art. I. On alienable property. Enough muſt be reſerved for the ſupport of the family. Modes of acquiring wealth, and modes of ſubſiſtence: diſtinctions in reſpect of theſe. Gift of property acquired by marriage, &c. Digreſſion on the foundation of law. Excluſive property of women. Gift of ſpoil; of joint-property. Form of donation. Penalty of reſumption. Reward of generoſity. Queſtion on a grant to a prieſt. Queſtion on gifts to take effect at a future time. Penalty for a breach of promiſe: a promiſe is a debt of conſcience; but it ſhould not be fulfilled if made to an improper man, or if the conſideration be withheld 131

Art. II. On irrevocable gifts. Benefit of gifts. Acknowledgment to a benefactor 174

Art. III. On void Gifts. The act of one diſturbed in his mind is null. Gifts by minors, &c. void. In diſtreſs a coparcener may aliene the whole eſtate. A wife, a ſon, and a ſlave, have no excluſive property. Gifts by madmen and outcaſts void; and gifts in ſickneſs. Certain contracts are utterly null. Bribes ſhall be reſumed. Revocable gifts. Reward of gifts. Gifts on illegal or miſtaken conſiderations void. Unguarded words are vain. Puniſhment of illegal gifts 181

BOOK III. *On the Non-performance of* AGREEMENTS, *&c.*

(204.) CHAP. I. On the Non-payment of Wages or Hire.

Sect. I. On Servants and others bound to Obedience. The title three-fold; definition of it. Five ſorts of ſervants including ſlaves. Properly four ſervants, a pupil, apprentice, hired ſervant, and agent. Servants by claſs. Definition of pupil. He is bound to obedience. Litigation between him and his teacher, between huſband and wife, father and ſon, maſter and ſervant,

Page

servant, inadmissible. Chastisement of a wife, son, servant, and pupil, permitted: a preceptor punished for using an improper instrument of correction. The pupil must give his gains to his teacher, and promote his benefit. Who may be taught. Apprentice defined. A period should be fixed. Penalty for not instructing an apprentice. Idleness punished. He must fulfil his time, giving to the teacher the fruits of his art. Three hired servants. Servants for pay and for a share of profit. An agent or commissioned servant. Distinction of work. Impure work defined: it must be performed by slaves. Fifteen slaves. An apostate shall be enslaved. A slave for the sake of his bride. Servitude for the discharge of a fine 208

Sect. II. On Emancipation from Slavery. —— Art. I. On enfranchisement of slaves. Five slaves can only be emancipated by the act of their masters. A *Súdra*, though emancipated, is still bound to servitude. A soldier or a merchant should be supported in distress, and employed in the business of his profession: but any *Súdra* may be employed in servile offices. A slave self-given may be reclaimed. Slavery by purchase from a robber, or by force, is null. A slave saving his master's life, shall be emancipated and rewarded. Emancipation of one maintained in a famine, and of certain other slaves. A pledged slave redeemed by payment of the debt. Some slaves redeemed by finding a substitute; others on relinquishing the consideration of servitude. A female slave bearing a son to her master, is emancipated. Form of manumission. A slave is destitute of exclusive property. The wife of a slave becomes slave to the same master 21

Art. II. On Persons liable to Slavery. Slavery not permitted in the inverse order of classes. Penalty for the ill employment of a man of high class. Punishment for illegally enslaving a woman 2

Sect. III. On Wages and Hire. Wages regulated by agreement or by fixed-rates; paid according to work done. Proportion of the produce allowed to ploughmen, &c. Wages of seamen. Care of implements intrusted to a servant. Penalty for neglect. Obligation to complete the work undertaken. Loss happening by the fault of the servant must be made good by him. Interest on wages which are withheld; a fine imposed. Hire of dancing girls and harlots. Hire of a house, cattle, and vehicles 2

CHAP.

Page

(34) CHAP. II. On the Non-performance of Agreements.——Colleges of prieſts and other communities. Fines for diſobeying the chiefs of an aſſociation. Penalty for a breach of engagement in an aſſociation. Puniſhment of deſertion and embezzlement. Conſpiracies puniſhed, and improper meetings repreſſed. Penalty for refuſing to aſſociate as uſual with another. Fraud on the revenue puniſhed. Property of a community. All the aſſociates ſhare the ſtock and debts while they remain in the ſociety 285

CHAP. III. On Reſciſſion of Purchaſe and Sale.

Sect. I. On Reſciſſion of Purchaſe. Form of delivery ſix-fold. The title defined. When a purchaſe may be reſcinded. Time allowed for examining commodities. Penalty on returning goods purchaſed. Goods ſufficiently examined before purchaſe cannot be returned. Goods may be returned if a concealed blemiſh be diſcovered: but not a thing bought with known blemiſhes 307

Sect. II. On Reſciſſion of Sale. A compenſation muſt be made. Penalty for detaining goods after the price has been paid or tendered. Penalty for reſcinding the contract. This law is extended to all contracts. Forfeiture of a tenth part by breach of contract. On whom the loſs falls, if goods be damaged. Puniſhment of frauds. Forfeiture of earneſt. Reſumption of a thing illegally ſold. Fines on cheats. Puniſhment of combinations to raiſe or foreſtal the market. Regulation of market rates. Sale of old apparel. Barter 317

CHAP. IV. On Diſputes between Maſter and Herdſman.

Sect. I. On Wages of Herdſmen and their Duties. The rates of wages in kind. Duties of a herdſman. Reſponſible for cattle if loſt by his fault. Defence of cattle. Penalty for neglect. Theſe rules extended to all cattle. Evidence of the natural death of cattle 337

Sect. II. On Fines for Miſchief done by Cattle. A common paſture muſt be left, proportionate to the ſize of the town. Definition of village, town and city. Treſpaſſes within the common, &c. not puniſhable, unleſs the herdſman offend wilfully. Fines and puniſhment of treſpaſſes. A ſufficient fence ſhould be made.

Page

ſociety to be ſhunned. Conduct enjoined to married women. Reverence due to a huſband. Reward of fidelity and obedience. Puniſhment of diſloyalty. Fine for miſconduct..... 426

Sect. II. On the Conduct of Women whoſe Huſbands are abſent. They ſhould ſubſiſt by blameleſs arts, avoid ſports, dreſs, &c. They muſt live under control, with a guardian 446

CHAP. III. On the Duties of a faithful Widow.

Sect. I. On dying with or after her Huſband. Future reward of burning with her huſband's corpſe. It is an atonement for evil. Reward of burning on a ſecond pile upon news of the huſband's death. Pregnant women and others not permitted to burn. A prieſteſs not permitted to burn on a ſecond pile. Cremation may be delayed to give time to the widow 451

Sect. II. On the Duties of Widows chooſing to ſurvive their Huſbands. They muſt practiſe auſterities, avoiding certain gratifications. Reverence is due to faithful wives. By rigid conduct a widow attains bliſs. By a ſecond marriage ſhe forfeits it..... 459

CHAP. IV. On Incontinence.

Sect. I. On the Appointment of a Wife to raiſe up Offspring. A ſon may be procreated by a kinſman on the widow of a *Súdra* after a legal appointment. Such a ſon is called Son of the Wife. Afterwards the kinſman and widow muſt behave like father and daughter..... 466

Sect. II. On the Same; and on ſuch Huſbands as may be forſaken by their Wives. Sinners and others may be forſaken, to take another huſband for the ſake of progeny. How long a woman muſt wait for her abſent huſband. The practice of raiſing up iſſue to a deceaſed kinſman is reprehended and prohibited in the preſent age..... 470

Sect. III. On ſecond Marriages. Diſtinction of twice-married women and incontinent wives. Their children are degraded; themſelves deſpicable and ſinful. A woman muſt not be given away without her own conſent. Certain women ſhunned in contracting marriages. Fine for giving in marriage a blemiſhed damſel. Fine for defamation. Marriage of a widow to the brother of the deceaſed. Her conſent requiſite. The receipt of a nuptial gratuity by the father cenſured. After a promiſe,

 a worthier

Page

and other ſons; but not on a ſecond partition after re-union, nor if the eldeſt ſon defraud his brothers. Sons equal in claſs have equal ſhares. Diſtribution among ſons by different mothers. Partition by allotting ſhares to mothers for their ſons. Partition among ſons unequal in claſs. Seniority, how determined in the caſe of twins, and in low claſſes. Diſtribution by ſucceſſive choice. Portion allotted to an unmarried ſiſter. The acquirer of property generally obtains a double ſhare. The practice of deductions in right of ſeniority is now obſolete.....585

ORIENTAL LITERATURE.

The following WORKS on EASTERN LITERATURE *are in the Preſs, and will ſpeedily be publiſhed, by* J. DEBRETT, *oppoſite Burlington-Houſe, Piccadilly:*

In One large Volume, Royal Quarto,

Printed in the new Talic Type caſt by Mr. VINCENT FIGGINS for Meſſrs. WILSON and Co. of the ORIENTAL PRESS, and

Illuſtrated with Thirty-two Plates, containing EXACT IMITATIONS of PERSIAN MANUSCRIPTS,

The celebrated Grammar, originally publiſhed at Calcutta,

INTITULED

THE PERSIAN MOONSHEE,

By FRANCIS GLADWIN, Esq.

CONTAINING

The Grammatical Rules,
The Pund Manch of Sadi,
Forms of Addreſs,
Specimens of Arabic,
Select Tales and Pleaſing Stories, in an eaſy Style, Perſian and Engliſh;
Lives of the Philoſophers, do.
Kowayed us Sultanet Shah-Jehan,
Dialogues, Perſian and Engliſh;
Some Chapters of the Goſpel of St. Matthew, do. with Notes by the late WILLIAM CHAMBERS, Eſq.

This Work will be found to contain every requiſite inſtruction for thoſe who may wiſh to obtain a thorough knowledge of the Perſian Language, and to render the moſt difficult Hand-writing perfectly familiar.

In One Volume, Royal Octavo,

The BAKHTYAR NAMEH;

OR

The Story of PRINCE BAKHTYAR and the TEN VIZIERS;

BEING

A Collection of Perſian Tales, from a Manuſcript in the Poſſeſſion of Sir WM. OUSELEY.

This Work will be printed in Perſian and Engliſh. Some Copies of the Engliſh may be had ſeparate.

In Quarto,

The ORIENTAL COLLECTIONS,

Vol. III, Nos. I. and II.

In

In One very large Volume, Octavo,

Dedicated, by Permiſſion, to the Right Hon. HENRY DUNDAS, one of His Majeſty's Principal Secretaries of State, and Preſident of the Board of Commiſſioners for the Affairs of India; and alſo, by Permiſſion, to the Hon. the COURT of DIRECTORS of the Eaſt India Company;

The ASIATIC ANNUAL REGISTER,

OR

A View of the Hiſtory of HINDUSTAN, and of the Politics, Commerce, and Literature of ASIA, for the Year 1800.

TO WHICH IS PREFIXED,

A HISTORY of INDIA, from the earlieſt Ages.

In Three large Volumes, Quarto,

A DICTIONARY,

ENGLISH and HINDOOSTANEE,

IN WHICH

The Words are marked with their diſtinguiſhing Initials, as HINDUWEE, ARABIC, and PERSIAN; whence the HINDOOSTANEE (or what is vulgarly but improperly called the *Moor* Language) is evidently formed.

TO WHICH IS PREFIXED,

A GRAMMAR of the HINDOOSTANEE Language.

By JOHN GILCHRIST.

ALSO,

The ORIENTAL LINGUIST;

An eaſy and familiar Introduction to the popular Language of HINDOOSTAN, vulgarly but improperly called the *Moors*;

COMPRISING

The Rudiments of that Tongue; with an Excellent VOCABULARY, Engliſh and Hindooſtanee, and Hindooſtanee and Engliſh; accompanied with ſome plain and uſeful DIALOGUES, TALES, POEMS, &c. to illuſtrate the Conſtruction, and facilitate the Acquiſition of the Language.

TO WHICH IS ADDED,

For the Accommodation of the Army,

The Engliſh and Hindooſtanee Part of the ARTICLES of WAR, from Col. WILLIAM SCOTT's Tranſlation, with Practical Notes and Obſervations.

By the Author of the Engliſh and Hindooſtanee Dictionary.

London,

PRINTED AT THE ORIENTAL PRESS, BY WILSON & CO.
Wild Court, Lincoln's Inn Fields.

Book II.—*On* Deposits, &c.

CHAP. III.

ON

CONCERNS AMONG PARTNERS.

Sect. I.—*On Partnership in Trade and Adventure.*

I.

Nárada:—When traders, or others, jointly carry on buſineſs, it is called a Concern among Partners, a title of judicial procedure.

"Jointly," on a joint ſtock. The *Retnácara.* The word ſignifies 'mixed' or 'united;' for the verb *bhú*, compounded with the prefix *ſam*, ſignifies mix. That union is formed by means of a joint ſtock, or by means of united perſonal efforts. Thus five traders, uniting their capital, carry on trade by purchaſe and ſale of commodities; or five men, receiving wages, undertake jointly to aſſiſt the buſineſs of ſome rich perſon. The expoſition of the *Retnácara* muſt be underſtood as illuſtrative of a general ſenſe. The meaning of the text is ſubjoined: the expreſſion "and others" comprehends officiating prieſts receiving a ſtipend and the like. The union of capital, or exertion, for work, for commerce, for effecting ſome buſineſs, for a ſacrifice

or the like, or the ſame work performed by ſeveral perſons on a joint ſtock, or with united labour, is a concern among partners, or is a common exertion by partners; the inflection of one caſe being ſubſtituted for another. Conſequently the performance of the ſame work by two or more perſons uniting by means of joint capital and ſo forth, is a concern or common exertion of partners *(ſambhúya ſamutt'hána)*; *ſt'há*, preceded by *ſamut*, ſignifies performance of work. Or the relative is employed in the ſeventh caſe with the ſenſe of refuge or prop, as in the example "reſides with his preceptor:" conſequently that agreement or rule, on which buſineſs is jointly conducted, is a title of law called Concerns among Partners. The pronoun is uſed in the maſculine gender, as in the text of VYÁSA (Chapter II, v. IV).

With what perſons ſhould partnerſhip be contracted; and with what perſons ſhould it not be contracted? This queſtion is anſwered in the ſubjoined text:

II.

VRÍHASPATI:—Prudent men ſhould not carry on trade, or the like, jointly with perſons deficient in capacity or induſtry, afflicted by diſeaſe, ill-fated, or deſtitute of friend *and home:*

2. Let a man carry on buſineſs jointly with perſons of high birth, able, diligent and ſenſible, ſkilled in coins, in purchaſe and in ſale, honeſt and perſevering.

In all affairs, an incapable man ſhould be excluded. An indolent man, who neglects buſineſs, though able to perform it, ſhould in general be excluded: in ſome inſtances, however, as in the duties of an officiating prieſt, the excluſion is not eſſential. The exception of a perſon afflicted by a diſtemper, which diſqualifies him for buſineſs, is proper, for he is incapable: it is repeated, becauſe the excluſion of a perſon, in whom diſeaſe has made its firſt appearance, is neceſſary on ſome occaſions; and a perſon afflicted by a diſeaſe indicating a taint of ſin, muſt be excluded from the performance of ſacrifice, though otherwiſe capa-

ble; for, even pure perſons, jointly performing a religious rite with him, would be diſhonoured, ſince no benefit would ariſe from it. Outcaſts and the like ſhould alſo be excluded from the performance of a ſacrifice or other ceremony; for the term is illuſtrative of a general meaning. "Ill fated;" not deſtined to acquire wealth, gain, honour, and the like: it may be known from his horoſcope, or from the viſible reſult of his actions: he muſt be ſhunned in the concerns of traders and the reſt. "Deſtitute of friend" or protector; ſuch a man is excepted in concerns of trade and the like; for, ſhould a diſpoſition to knavery or wickedneſs ariſe, it would not be repreſſed: or, "deſtitute of home;" excepted in the apprehenſion that ſuch a perſon might abſcond with the property.

"Perſons of high birth;" a perſon ſprung from an honourable family will not be diſpoſed to break his engagements, even though his life be endangered. "Able;" ſkilled in buſineſs. "Diligent;" attentive to buſineſs without conſidering his own eaſe: ſuch a perſon is ſuperior to men in general. "Senſible;" capable of contriving expedients when diſtreſs occurs: even in the performance of religious rites, the ceremony miſcarrying, a perſon acquainted with the modes of expiation or the like may be required; other caſes are obvious. "Skilled in coins;" explained in the *Mitácſharâ* ſtamped money, gold *niſhcas* and the like, converſant with theſe, and with ſilver coins and the reſt, and ſkilled in diſtinguiſhing coins which contain copper or the like: in commerce his excellence is obvious; in other affairs he is alſo uſeful. "Skilled in purchaſe and in ſale;" in commerce, he who is converſant with purchaſe and ſale, knows the profit to be made: in other inſtances, it muſt be explained according to circumſtances. "*Honeſt*, or pure;" is referred to conſtant, occaſional, or voluntary rites, or to concerns in general.

Is not the direct precept ſuperfluous, ſince partnerſhip is of courſe permitted with perſons different from thoſe excepted; or the exceptive text ſuperfluous, ſince perſons, different from thoſe with whom partnerſhip is directed, are of courſe excepted: and thus, is not the repetition ſuperfluous? No: the exceptive text is neceſſary to exclude the perſons *therein* deſcribed; and the direct precept is neceſſary to denote, that the perſons deſcribed *in it* ſhould be ſought for. All perſons different from thoſe deſcribed

in the ſecond verſe, are not to be excluded: perſons not of high birth, nor yet deficient in capacity, and ſo forth, may be admitted: but if a perſon of high birth, and ſo forth, be found, he ſhould be preferred. This ſenſe is inferible. The text is a precept of ethicks, ſhowing preſent good and evil: therefore, ſhould the precept be not obſerved, preſent evil, as loſs, ſtrife, or the like, enſues: but it is no breach of duty; on the contrary, anyhow to maintain a perſon afflicted by diſeaſe is a duty: and there is no offence in ſometimes admitting an indolent perſon *into partnerſhip*, on an agreement for conducting commerce upon the ſtock of one by the labour of another. It muſt be conſidered, that, if all exclude incapable perſons and the reſt, it follows that all *partners* muſt be capable: conſequently, a partnerſhip of capable with incapable perſons is forbidden. In ſome inſtances, a partnerſhip may exiſt, of perſons all deficient in capacity; for none of them are incapable, compared to each other: but if, among perſons of ſimilar rank, one be ſuperior, reſpect ſhould be ſhown to him.

III.

NÁREDA:—The junction of ſtock is the cauſe of men carrying on buſineſs in partnerſhip with a view to gain; therefore each ſhould contribute his ſhare to the common exertion.

"Junction of ſtock;" union of capital. "Is the cauſe;" is the efficient means. "Therefore," that is, for this reaſon, they ſhould make exertions in proportion to their ſhares. The text is ſo expounded by CHANDÉSWARA. Without a capital, or ſtock, trade cannot be carried on; therefore, let all contribute wealth, and ſupply what is required for trade, as the hire of boats, oxen, and other carriage. "In proportion to their ſhares;" that is, let not one furniſh the whole, as appears from a text which will be cited.

IV.

NÁREDA:—As the ſhare of a partner, *in the common ſtock*,

ſtock, or in work, is equal, or more, or leſs, in the ſame proportion ſhall his charges, loſs, and profit, be *equal, increaſed, or diminiſhed.*

As the ſhare of each partner in the whole capital is leſs, more, or equal, ſo ſhall be his "loſs" on the capital, by the ſinking of a boat or the like: the loſs ſhall be ſettled in proportion to the ſhare *of ſtock.*

"Charges;" neceſſary charges; the king's taxes, and the hire of boats and the like. "Profit;" gain. If trade be again carried on upon the profit added to the original ſtock, the loſs and profit is ſhared, as above mentioned. Both texts may be applied to agriculture and the like, unleſs more be expended by one of the partners, of his own authority. In directing that the charges, loſs, and ſo forth, be increaſed or diminiſhed in proportion to the ſhare of a partner in the common ſtock, the ſame is underſtood of labour; as is clearly expreſſed in the following text:

V.

VRIHASPATI:—As his ſhare of the outlay is equal greater, or leſs, in the ſame proportion, *unleſs there be a ſpecial agreement,* ſhall each partner pay charges, perform labour, and receive profit.

"Charges;" loſs by the ſinking of a boat or the like; and diſburſement for the payment of the king's taxes, and ſo forth. All this ſuppoſes that there is no ſpecial agreement.

VI.

YÁJNYAWALCYA:—In a partnerſhip among traders who carry on buſineſs with a view to gain, let the profit and loſs be diſtributed to each according to his ſhare in the ſtock, or according to ſpecial agreement.

If there be no ſpecial agreement, the diſtribution muſt be regulated by the ſhares in the ſtock; if there be a ſpecial agreement concerning profit and loſs, let the profit and loſs be diſtributed accordingly. The *Chintámeni*.

Profit and loſs are mentioned as inſtances merely; for the reaſon of the law is equally applicable to labour. The *Retnácara* concurs in the ſame expoſition, but reads, in the fourth meaſure of the verſe, *yat'há vá ſamvidá crĭtau*, inſtead of *yat'há vá ſamudábhrĭtam*: it is expounded 'or as ſettled by a *ſpecial* agreement.' According to this opinion, more is allowed, under a ſpecial agreement, to one of the partners, from a motive of reſpect or affection: but, extorted by force, ſuch an agreement is null. (Chap. II. V. x.)

If there be a ſpecial agreement in reſpect of labour, it is expreſsly declared that the contribution ſhall be unequal.

VII.

NÁREDA:—Let the partners, unleſs bound by *a previous* agreement, duly contribute to the ſtock, to the charges of living and of trade, to the deductions and weights, and the care of valuable articles.

"Stock;" ſtore for purchaſe and ſale. "Charges of living;" way charges. "Charges of trade;" hire. "Deductions" made, for particular purpoſes, from the joint property. "Load;" weights. "Valuable articles;" ſanders wood and the like. "Duly," as is proper. "Unleſs bound by agreement;" not being bound, no ſpecial agreement having been previouſly made. The *Retnácara*.

"Way charges:" if one of four partners go to a foreign country to buy or ſell, let all the partners defray his way-charges, and ſimilarly defray the charges of his maintenance while living abroad; for the reaſon of the law is equally applicable; and it is equally intended by the text, ſince the word hire ſignifies food in general. "Charges of trade, or *hire*;" the term is illuſtrative of a general meaning, comprehending the king's taxes and the like.

like. "Deductions" may occur where an excefs has been given by miſtake, and in other caſes: there is no objection to the explanation of this term as intending debt: if it happen that a purchaſe, or the king's taxes, cannot be ſupplied from the ſtock already accumulated, it being then neceſſary to contract a debt, the debt contracted by the partner ſent abroad, who, though not expreſsly authorized, has not been reſtricted from contracting debts, muſt be paid by all the partners. But this is not mentioned in the *Retnácara*. "Load," explained weight, intends the weights *uſed in commerce* and ſo forth. Let them provide and defray thoſe ſeveral articles. By the expreſſion 'and ſo forth,' gift and the like is comprehended *in the gloſs*. "As is proper;" in proportion to their ſhares. "No ſpecial agreement having been previouſly made;" an agreement for exemption from labour not having been made at the time when all united *in partnerſhip*; not being bound by ſuch an agreement.

Others explain the text, "Let all apportion the veſſels, the accumulation, the charges, the expenſe of tranſport and of cuſtody, and the durable ſhares." If any misfortune happen, it ſhall not fall on one of the partners. But, if there be an agreement for proportioning the labour, all ſhall not perform all the work, but they ſhall furniſh labour reſpectively, according to agreement: as is intimated by the concluding part of the text. Or, if there be an agreement, that one of the partners ſhall contribute no labour, it muſt be ſo ſettled.

Both opinions ſhould be admitted; for they are proper: and what is conſiſtent with common ſenſe, though not mentioned in either expoſition, muſt neceſſarily be underſtood as comprehended in the ſenſe of the text.

VIII.

VYÁSA:—Never deceiving each other, preſent or abſent, let them make ſales and purchaſes according to *the value of* the various articles.

Here the privative *a* muſt be interpoſed; "not deceiving:" that is, let them tranſact buſineſs, never deceiving each other.

The *Vivâda Chintâmeni*.

Deceit in the preſence of the partners conſiſts in appropriating things under falſe pretences, or in not making due exertions. Thus, one of the partners takes a thing and ſays, in the preſence of the reſt, "I take my private property which was placed here;" or he miſtates the price paid for a commodity. Deceit in reſpect to labour may be thus: when ſent for any buſineſs, he ſays, "this buſineſs is not to be performed by me;" or ſays, "I have performed much labour, let this buſineſs be done by you." Deceit in the abſence of the partners is obvious. Let them proceed according to the profit between the purchaſe and ſale of the various articles, as cloves, nutmegs, peaſe, wheat, cotton, graſs and the like.

IX.

VRĬHASPATI:—They are declared to be competent arbitrators and witneſſes for each other, in doubtful caſes of deceit, provided they bear no enmity to either party.

"They;" the partners. The *Retnácara.*

If one of eight partners, being accuſed of deceit, does not charge a ſtranger with the fault, but ſimply denies the fraud, thoſe partners, who are neither accuſers nor accuſed, may officiate as arbitrators to decide on the fraud alleged; and they may be witneſſes. An exception is mentioned, "provided they bear no enmity to either party," to the accuſed or accuſer. The meaning is, that, if there be any diſpute concerning trade in partnerſhip, the arbitration of the partners may in ſome inſtances be admitted; but the evidence or arbitration of ſtrangers or king's officers is not forbidden.

Others read the latter part of the text, "let them not, from an impulſe of hatred, expel a partner on pretence of fraud*." Though naturally averſe from him, yet unable from modeſty or other motive at firſt to refuſe him, having thus, from falſe ſhame or other cauſe, once admitted a perſon not agreeable to them, ſhould they,

* The various reading is on the fourth meaſure: *na dwiſhyur dwéſhaſanyutáh*, inſtead of *yé na dwidwéſhaſanyutáh.*

they, recalling their averſion, attempt to expel him on a falſe accuſation, let the king prevent them.

How then ſhall he be cleared? In the mode mentioned by VRĬHASPATI:

X.

VRĬHASPATI:—Should one of the partners be juſtly ſuſpected of fraud, in buying, ſelling, *and the like*, he may be cleared by ordeal: ſuch is the rule in all controverſies.

This text propounds the mode of trial. "Juſtly ſuſpected of fraud;" thought guilty of fraud, but with ſome doubt; for, if it be certain, he cannot be cleared by ordeal. If he be not cleared by popular proof, nor be convicted of fraud, he may clear himſelf by ordeal: it is not ordained in the firſt inſtance; for a text directs, "on failure of theſe ſeveral proofs, one of the ſeveral ordeals is ordained" (Chapter II). Sufficient cauſe of ſuſpicion muſt be ſhown to ground *this* procedure upon, not merely that he has been much employed in the tranſactions of the joint trade: this obſervation is grounded on the opinion of RAGHUNANDANA, in the *Dáyabhága tatwa;* "otherwiſe partition of heritage could never be made without ordeal, for knavery may be always apprehended."

If one of the partners, ſkilful in buſineſs, have with much labour tranſacted ſales and purchaſes at home and abroad; and, when partition is made, if he be ſuſpected of fraud; let him not in the firſt inſtance undertake ordeal, but ſay, "examine the ſales and purchaſes." Then, ſhould his ſtory be inconſiſtent, or ſhould he allege a delivery to a perſon to whom it is not proved that any thing was delivered; in this, and ſimilar inſtances, ſuſpicion juſtly ariſing, a judicial procedure is proper. But otherwiſe, his conſcience is his witneſs.

Ordeal may be required in a caſe of fraud in regard to labour. Thus, one of ſeveral partners, bound by a previous agreement, purchaſes commodities in another country; another brings thoſe commodities home; a third ſells them at home: in ſuch a concern, goods, which were brought by water on a boat, being deſtroyed

ſtroyed by a ſtorm, the partners, on hearing of it, ſay, "they were loſt by thy neglect;" the other replies, "I did not neglect them:" in this, and ſimilar caſes, *ordeal is directed.* "Such is the rule in all controverſies:" even in other caſes, in regard to loans and ſo forth, if there be ſuſpicion, the party muſt be cleared by ordeal or other evidence. Evidence in general is intended. So the *Retnácara* and *Chintámeni.*

XI.

VRÝIHASPATI:—When the principal ſtock or the profits are diminiſhed, in the caſe of partnerſhip, by the act of GOD or of the king, that loſs muſt be borne by all the partners in proportion to their ſhares.

When the accuſed is cleared by ordeal or other evidence; and it is proved that the goods were loſt, without any neglect on his part, by the act of GOD or of the king; that loſs muſt be borne by all the partners in proportion to their original ſhares. He repeats what he has before ſaid (V); or the word may be there underſtood as intending charges only (ſuch as payment of the king's taxes and the like), not loſs: but the ſame rule is extended to a loſs which happens without negligence; that is, a loſs which happens notwithſtanding the utmoſt exertions made to prevent it; or a loſs which occurs when the partner, through inadvertence, placed the goods in a perilous ſituation, without ſuſpecting the danger. According to the *Retnácara*, the firſt loſs or diminution mentioned in the text intends loſs of capital; the ſecond, loſs of profit: and MISRA gives the ſame expoſition. If the loſs be total, it muſt be proportionally borne by all the partners; if profit only be loſt, ſhall it be borne by that partner who had charge of the concern when the loſs happened? To remove this doubt, the text expreſſes, "when the profits are diminiſhed, &c." If profit be loſt with capital, it is proper, on the ground of favour, that the partners ſhould ſhare the loſs of profit; but ſhall the loſs of capital be borne by him who managed the concern when the loſs happened? To remove this doubt, the text expreſſes, "when the

the principal ſtock is diminiſhed, &c." The ſame deciſion ſhould be given when the profits are diminiſhed by waiting for a riſe or fall of price. An exception is mentioned in the following text:

XII.

VRĬHASPATI:—But, if one partner, acting againſt or without the aſſent of the others, by his negligence injures the common property, he alone muſt indemnify all the partners.

"Without the aſſent of the others," unknown *to them*: ſo the *Chintámeni*. It may ſignify 'not ſent to bring goods from a country where they are cheap.' It does not intend a caſe where, having gone to that country on ſuch a miſſion, the partner, when returning thence, by accident, without the knowledge of the reſt, meets with a dangerous place; elſe a partner could never go to a foreign country, where he muſt act without directions from all the partners, ſince they would not be preſent.

"Againſt the aſſent of the others;" forbidden to go at that time. For example: one partner wiſhes to travel by water carriage to a foreign country; the others conſent, but ſay, "wait this day, incurſions are expected from the army of a foreign prince." The perſon employed, nevertheleſs, goes that very day; and the goods are plundered by the army of a foreign prince. In that caſe a fault is imputed to the partner acting againſt the aſſent of the others.

In the caſe ſuppoſed, if the goods be not plundered by the forces of a foreign prince, but the boat happen to ſink in a ſtorm, what ſhall enſue? It cannot be argued, that the loſs muſt be made good by him, during whoſe management it occurs, becauſe the goods are loſt by a perſon acting againſt the aſſent of the others: the motive of forbiddance being different, the prohibition is nothing to the purpoſe. Not being wholly dependent on their commands, ſhall he not follow the road of gain, although a motive of objection be ſet forth, if he be able to counteract the cauſe of objection? Nor ſhould it be argued, that, were it ſo, the loſs muſt be borne by all. If he had not gone that very day, the boat would not have been loſt.

To

To the queſtion thus propoſed, the anſwer is, the loſs of the boat, happening in a ſtorm, is accidental and unforeſeen: it is the act of GOD. But if he quit the route to elude the enemy, and the boat be wrecked in conſequence, he muſt make good the loſs. Other caſes muſt be determined on the ſame principle.

"By his negligence," is a general expreſſion comprehending the act of GOD or of the king. It appears from this expreſſion, that a loſs, happening by the negligence of a partner not acting againſt or without the aſſent of the others, muſt be borne by all the partners.

XIII.

NÁREDA:—And what is loſt by the negligence of one *partner* acting againſt or without the conſent of all the partners, muſt be made good *by him.*

The import is the ſame as in the preceding text. The particle is uſed in the ſenſe of "and."

XIV.

YÁJNYAWALCYA:—If one partner does what the others forbid or diſapprove, or if he be negligent *in doing what they allow,* and the *common* property be injured, he ſhall make it good; but he who preſerves it from *robbers* or *other* misfortune, ſhall receive a tenth part of it *as his reward.*

The property being endangered by the act of GOD or the king without any fault on his part, if one partner preſerve it by his own exertions, he ſhall receive a tenth part. For example: a fire accidentally happening where the whole ſtock is hoarded, if one partner extinguiſh the fire by his own exertions, or be able to ſave the goods, he ſhall receive a tenth part as his reward. So, if he recover goods ſunk by a ſtorm in the middle of the river on their way from a foreign country, throwing himſelf into the water at the riſk of his life, and dragging them on ſhore, he ſhall receive

receive a tenth part. Even in the caſe before mentioned, if one partner, going to another province againſt the aſſent of the others, ſave the goods from the army of a foreign prince, by his own exertions, by inſinuation, or by artifice, and gain conſiderable profit, it is reaſonable that he ſhould receive a tenth part.

A tenth part of what? It is anſwered, a tenth part of all the goods ſaved. If the partner who goes even againſt the aſſent of the others, ſave the ſtock by eluding the enemy, or by other means, *but do not gain conſiderable profit**, ſhall he receive a tenth part of the ſtock *ſaved?* Since the danger aroſe from his own fault, he is not entitled to a tenth part. But if the boat be loſt by the act of GOD, and he ſave any goods; in that caſe he ſhall receive a tenth part of thoſe goods, and all the partners ſhall divide the remainder; as ordained by the following text:

XV.

VRĬHASPATI:—If a ſingle partner, when danger is apprehended from the act of GOD or of the king, preſerve the common ſtock by his own exertion, a tenth part of it ſhall be given to him, and all ſhall have their reſpective ſhares of the remainder.

"Their reſpective ſhares," in proportion to their ſhares in the original ſtock: and the perſon who ſaved the common ſtock ſhall have his ſhare; the tenth part is as it were his reward.

XVI.

NÁREDA:—He who preſerves, by his own effort, the goods of the partnerſhip, when a calamity ariſes from the act of GOD, from robbers, from the king, or from fire, is entitled by law to a tenth part of them.

When danger only ariſes. The *Retnácara.*

XVII.

* I inſert this reſervation, to reconcile this and the preceding paragraph.

XVII.

CÁTYÁYANA :—To him who ſhall preſerve goods from robbers, water, or fire, a tenth part of their value ſhall be given: this is the rule in all ſorts of property.

" Preſerve;" ſave. The *Retnâcara.*

Some infer, from the expreſſion " all ſorts of property," that if the ſeveral property of any perſon in danger of loſs be ſaved by another, even in that caſe whoever ſaved it ſhall have a tenth part of the property ſaved. That is not the opinion of CHANDÉSWARA and MIŚRA; for this text appertains to the title of Concerns among Partners. Nor ſhould it be argued, that if a ſtranger preſerve any property belonging to joint traders from danger of loſs, he ſhall receive a tenth part of it; but CHANDÉSWARA and others deny the reward of a tenth part in caſe of a ſalvage of property belonging to a ſingle owner, as is expreſsly declared by them in theſe words: ' ſome hold, that the rule is ' the ſame in all ſorts of property, even though it belong to a ' ſingle owner; but that is not admiſſible, becauſe it is incon- ' ſiſtent with the title *under which the text is placed.*' This *again* is oppoſed, on the ſame objection, that it is inconſiſtent with the ſubject; for the ſubject propoſed is the rule of deciſion when one of the partners preſerves the goods from robbers and the like, not when they are ſaved by a ſtranger: and it has not been ſo declared in the *Cámadhênu*, nor by HELÁYUDHA, who hold that this has the ſame import with the text of NÁREDA. CHANDÉSWARA and others hold, that the tenth part of the property ſaved ſhall not be received, in the caſe of property belonging to a ſingle owner, which is preſerved from robbers and the like. Conſequently they concur with the *Cámadhênu* and with HELÁYUDHA.

What then is meant by " all ſorts of property?" The profits and the principal ſtock. Or it may be thus explained; there is not, in this caſe, any ſuch diſtinction as that which is declared under the title of Loans and Payment, in regard to the higheſt intereſt on gold, grain, wool, fruits, flowers, and ſo forth: but a tenth part of any property ſaved ſhall be received, whether it be gold,

gold, precious ſtones, pearls, pepper, quickſilver, grain, wool, graſs or the like. This is denoted by the very expreſſion 'all ſorts of property:' thus the epithet "all" denies any other rule in regard to any ſort of property, no diſtinction being any-where ſpecified between joint or ſeveral property: but it muſt not be objected, that, if ſuch be the caſe, whence is an exception deduced in regard to the property of a ſingle owner? It is deduced from the ſubject: conſequently the meaning is, "this is the rule in all ſorts of property, whether gold or any other commodity, belonging to perſons engaged in partnerſhip."

If any man, by his own labour, ſave the property of partners, or of any other perſon, in danger of loſs by water, fire, robbers or the like, what ſhall he receive? Although it be not ordained by the law, ſomething ſhould be given to him as a token of reſpect, or as a recompenſe, on the authority of the law concerning other caſes, or on the induction of common ſenſe.

It is inferred, that, among ten partners, if three join in ſaving any property which is in danger of being loſt in a river, or of being deſtroyed by fire, thoſe three perſons ſhall ſhare one-tenth part only, which ſhould be diſtributed in proportion to their reſpective exertions.

If one partner oppoſed the attempt of ſaving *the goods*, another remained ſilent, and the third approved the attempt, what is the law in this caſe? He who oppoſed it ſhall have no ſhare of *the gain on* thoſe goods: the perſon who remained ſilent ſhall have the ſhare *regularly* allotted to him: and ſo ſhall he who aſſented to the attempt; but he ſhall receive ſomething more than the other, as is declared by ĀPASTAMBA in reſpect of thoſe who cauſe an act to be performed, who aſſent to it, and who actually perform it:

"They all ſhare the retribution in heaven, or hell; but there is a difference in the reward of him with whom the act originates."

Who ſhall receive the ſhare of him who oppoſed the attempt? Not all the others, for there is no law to give a title to the perſon who remained ſilent; not the ſalvers only, for that is inconſiſtent with common ſenſe: thus, if a ſtranger ſave the property of another,

ther, which is in danger of loſs by water or the like, he is not entitled to the whole; and in this caſe, how can the preſerver be entitled to the whole, ſince he is a ſtranger in regard to the property of another? the law admits not a diſtinct kind of owner-ſhip founded on union of ſtock.

The queſtion propoſed is thus anſwered: the perſon who oppoſed the attempt ſhall receive his proportion of the capital ſtock; therefore, the capital ſtock ſhall be divided among all the partners, after giving a tenth part of it to the ſalvers: but the profits, after paying a tenth part to the ſalver, ſhall be divided in proportion to their ſhares among the other partners, ſolely excluding the perſon who oppoſed the attempt; for it will be ſhown, that even a man of crooked ways forfeits the profit only.

Is this a man of crooked ways? or does he not rather intend kindneſs? The man of crooked ways oppoſes another, leſt a ſhare of the labour ſhould fall on himſelf; it is proper he ſhould loſe his ſhare of the profit: but this man oppoſes the attempt to preſerve his partner's life, as he would his own; he oppoſes it, to ſave him from pain, thinking the fire irreſiſtible: why ſhould he loſe his ſhare of the profit? When he oppoſed the attempt, even then he forfeited his property; the profit belongs to him who, regardleſs of his partner's objections, and little valuing the preſervation of his own life, plunges into water, or ruſhes into fire, to ſave the property; but the partners, who aſſented, or remained ſilent, ſhall have a ſhare, for they had not abandoned the property: it is however proper that ſomething be given to the partner who oppoſed the attempt.

Has he not forfeited even his principal by abandonment? That ſhould not be aſſerted, for he has not abſolutely abandoned it. When the goods were carried away by water, his reflections are: "What can be done? They are loſt irrecoverably!" He does not abandon them by a declaration that he has no further intereſt in them. Shall his condition be the ſame with that of a man of crooked ways; for even that man loſes the profit only? It is not a ſatisfactory opinion which deems that admiſſible; for it is inconſiſtent with reaſon that the condition of a man who intends a kindneſs, but is unable to traverſe the water, though otherwiſe qualified for buſineſs, ſhould be the ſame with that of a man of crooked ways. It muſt not be argued, that

even

even his principal ſhould not be given to the man of crooked ways. There is no ordinance to that effect; for YAJNYAWALCYA would have ſaid, "without ſtock," inſtead of ſaying, "without profit," (XVIII). Nor ſhould it be affirmed that this law muſt be underſtood of the caſe when toil is omitted through indolence; but, in the caſe ſuppoſed, even the principal is forfeited. It is not fit that the property of one, ſaved by another, be retained by the ſalver, without the owner's aſſent declared in this form; "take the property you have ſaved." Neither ſhould it be argued, that all profit is forfeited by obliquity of conduct; for it is inconſiſtent with common ſenſe that a man who had previouſly done nothing perverſe or diſhoneſt, and had acquired profit by his own labour, ſhould now loſe all profit on account of his conduct in a moment of great danger. No forfeiture is incurred by oppoſing the attempt, from a motive of affection or the like, without fraud: but if it be oppoſed from a perverſe motive, the profit is forfeited: the ſalver ſhall receive a tenth of the principal and profit.

If a partner be convicted of fraud, the loſs muſt be made good by him: this is ſhown by the direction for diſtributing ſhares to all, if honeſt. His expulſion is *alſo* directed.

XVIII.

YÁJNYAWALCYA:—A man of crooked ways let the other partners expel without profit; and let a partner unable to act, appoint another man to act for him *.

Let the partners expel a man of crooked ways, (that is, a fraudulent partner,) without profit, giving him his principal ſtock only: but let him, who, though not fraudulent, is unable to act, appoint for his ſubſtitute another man able to act.

The *Retnácara*.

MISRA delivers the ſame expoſition.

A fraudulent partner is of two deſcriptions; one who is averſe from the performance of work, and one who embezzles pro-

* See V. xxxi.

perty. In regard to performance of work, a diſtinction muſt be admitted, as ſuggeſted by common ſenſe: the fraudulent partner forfeits the profit on that part in regard to which he offends; not the whole profit. A partner having bought goods without fraud, ſells them; and afterwards adopts fraudulent ways in his ſales and purchaſes, but has committed no fraud in regard to the firſt goods: in that caſe he ſhall have a ſhare of the profit; but he forfeits the profit on that part concerning which the fraud was committed. In all caſes, however, the fraudulent partner ſhall be expelled; for fraud is ſufficient cauſe of expulſion.

If he perform the labour directed in regard to ſales and purchaſes, but neglect the preſervation of the goods, what ſhall follow? If there be no ſpecifick agreement, and the ſhare of the buſineſs regarding purchaſe and ſale be performed by the directions of the other aſſociates, then, ſhould he neglect the preſervation of the goods, he ſhall be deprived of his ſhare in the profit; otherwiſe, the text would be unmeaning: and it is not reſtricted to neglect of buſineſs from the firſt day *of the partnerſhip*. But if he ſay, "I have ſkill in all other affairs, but not in the preſervation of goods," there is no perverſeneſs in him: therefore he may partake of the profit, by their favour. Or the maxim, "let a partner unable to act appoint another man to act for him," may be applicable to this caſe; therefore, let him engage ſome other perſon to preſerve the goods. On this point a diſtinction is mentioned.

XIX.

NÁREDA:—Should one partner be unable to act, his heir ſhall undertake the work; or, if there be no heir, another *partner* who is *willing and* able to act; if there be no ſuch perſon, all *the partners*.

"Diſability;" calamity, or incompetence: meaning calamity from a moral cauſe. "Heir;" the ſon, and ſo forth. "If there be no heir;" if the heir be unfit or unable, or if there be no heir preſent, another partner, who is able to act for both, ſhall undertake the preſervation of the ſtock; if there be no ſuch perſon, all

all the partners; for partners muſt be neceſſarily underſtood, ſince it would be improper to underſtand "all" as intending the world at large: and, from the context, partner muſt be underſtood even in the middle of the text: thus, "heir" muſt be underſtood of a partner; and the term comprehends kinſmen. If one partner be diſabled, he among the partners who is heir to the diſabled partner ſhould undertake his work; if he refuſe it, let the king *formally* appoint him; no other can act for him, if there be an heir capable of acting. But if there be no heir, or if he be incapable of acting for both, let another, who is able to act for both, undertake the work. Thus "able" is pertinent, otherwiſe it would be unmeaning; ſince a capable perſon may be unable to act as a ſubſtitute. The appointment of the ſubſtitute is referred to the king, becauſe there is no other perſon to whom it could be referred.

If there be no ſuch capable perſon, let all the partners preſerve the goods. The texts of YÁJNYAWALCYA and others (XIV &c.) being applicable to the preſent caſe, the ſalver or ſalvers ſhall have a tenth part of the property ſaved. This is inferred by CHANDÉSWARA.

If partners be underſtood in this text, another perſon may not be employed at the choice of the principal, on whom it is incumbent to preſerve the goods. This *objection* is not conſiſtent with reaſon, for *even* the heir may not be employed unleſs he be included in the partnerſhip. Nor ſhould it be argued, that the ſame rule may extend to a ſeparated kinſman, if there be no undivided brethren capable of acting; for ſuch an extenſion of the rule has no foundation in any ordinance, nor in the reaſon of the law. Nor ſhould it be argued, that the rule is grounded on the reaſon of the law; becauſe otherwiſe the word "able," in the text of NÁREDA, would be unmeaning: it may be taken as a deſcriptive epithet *nearly ſuperfluous*. If another perſon may not be employed at the choice of the principal; then, of courſe, the partners ſhould preſerve the goods, and receive a tenth part as their reward.

MISRA, thinking the application obvious, has not expreſsly ſaid, that the heir, and other perſons mentioned in the text, are included in the partnerſhip. It ſhould not be objected, that

MISRA expounds the text, "ſhould one *partner* die, &c.;" how then ſhould another perſon be employed at his choice? MISRA therefore could not have contemplated ſuch a conſtruction. Still it is difficult to diſprove the ſuppoſed diſqualification of his heir not included among the partners. We therefore hold it proper, in this caſe, to follow the expoſition of CHANDESWARA, "If one partner be unable to act, let his heir undertake *the preſervation of the ſtock, &c.*" and in this caſe another perſon cannot be employed at his choice: but if there be no ſon or *near* heir, a more diſtant heir, included among the partners, ſhould undertake it; next, another *partner* able *to act;* or if there be no ſuch perſon, all the aſſociates. Such is the ſucceſſive order. The ſon of a diſabled partner being properly under his authority, it is not neceſſary that another heir ſhould be employed, if a ſon be forthcoming; but, on failure of a ſon, he ſhould be employed; otherwiſe the ſpecial mention of "heir" in the text would be an unmeaning repetition. It ſhould not be argued, that, if another act *for a diſabled partner*, although an heir exiſt, the text is propounded to ſhow that the heir, complaining before the king, may prevent it. There is no argument for ſelecting this limited conſtruction. If the heir refuſe the undertaking, and another partner accept it, then his employment is not diſputed. In fact the heir ought to perform the work, becauſe ſuch is the actual courſe: for, on the death of the father, his obligations devolve on the ſon; but, in his default, a ſubſtitute ſhould be appointed. Therefore the *Retnácara* ſhows, that the heir ſhall receive a tenth part of property ſaved by him. If the perſon be ſelected at the choice of the principal, he ſhall receive a tenth part, or other reward as may be agreed on between them: but for others, the reward is a tenth part of the property ſaved; for it is ordained by Sages treating of the ſame ſubject. A tenth part of what? Shall it be a tenth part of the principal ſtock and profits, or of the profits only? On the firſt ſuppoſition, in what does the ſituation of the partner differ from the ſituation of one who forfeits his ſhare of profit, ſince the gain does not always exceed a tenth part of the principal? On the ſecond ſuppoſition, he, who ſaves the ſtock only, would have no reward. Both objections are wrong: for the ſituation of the partner does differ

when

when the gain may exceed a tenth part; and if the principal ſtock only be preſerved, the reward *paid* may be replaced by a ſhare of future profit. But the rule of deciſion is this: a tenth part of the property ſaved, both the principal ſtock and the profit *being preſerved*, ſhall be received by the preſerver of it; and this rule concerns property ſaved by exertion, not by the act of GOD, while the partner merely talked of ſaving it.

Him who embezzles the joint ſtock let the partners expel without profit, after taking back the property embezzled. Loſs of profit ſhall be his puniſhment; for no diſtinction is mentioned, in regard to fraudulent partners, in the text of YÁJNYAWALCYA (XVIII).

If any trader die, what ſhall be done in that caſe? This queſtion is anſwered in the following text:

XX.

NÁREDA: — If any travelling merchant, coming from a foreign country, ſhould die, the king ſhall keep his ſtock until his heir appear.

2. Should he have no kinſman in a direct line, let the king deliver it to perſons allied to him, or to collateral kinſmen; and if no ſuch heir appear, let him keep it well guarded for ten years.

3. Such property without an owner, and without a claimant as heir to the deceaſed, let the king, when it has been kept ten years, appropriate to his own uſe: thus juſtice will not be violated.

MISRA thus interprets the texts; if one of ſeveral partners die, it is directed by the preceding text (XIX), that his heir, another partner, or all the partners, ſhall preſerve the ſtock; but if all the partners die, the rule for that caſe is delivered in theſe texts (XX). According to his opinion, if one partner die, there is no reference to the king; but his partners ſhall preſerve his ſtock, and deliver it, as the king is directed to do, to his heirs, near kinſmen, or collaterals: on failure of theſe, let it be delivered to the king, like an *eſcheated* inheritance.

But, according to CHANDÉSWARA, the firſt text (XIX) deſcribes the perſons who ſhould preſerve the ſtock of a living partner when diſabled: and the rule, in caſe of death, is declared in the ſubſequent text (XX). Conſequently, if one of the traders die, notice ſhould be given to the king; and the king ſhall preſerve his ſtock, and afterwards deliver it to his heirs when they appear, retaining a twentieth or other portion of it (XXII) as a recompenſe for his care: but, on failure of heirs, he may appropriate the whole to his own uſe. A diſtinction will be mentioned in explaining another text. This is *alſo* to be underſtood of a caſe where all the traders are deceaſed.

Others hold, that, if any trader be unable to act, his ſon, as heir, ſhall perform his work; in default of the heir, any partner, or other perſon, appointed by the principal, ſhall perform it, and receive ſuch compenſation as may be ſtipulated; but if ſuch perſon be not able to act, all the partners. A tenth part being directed by Sages for a caſe of ſalvage only, if the whole work be done, the recompenſe ſhould be the half, or other proportion of the profit, according to circumſtances. The expreſſion "ſhall undertake it" (XIX), is not underſtood merely of ſaving the ſtock, but of buſineſs concerning the ſtock: and this has been declared by YÁJNYAWALCYA, "let a partner unable to act appoint another man to act for him;" it is not poſitively required that the ſubſtitute ſhall be one of the partners. But NÁREDA expreſsly ſays "another," *that he may be employed or not* according to the poſſibility or impoſſibility *of appointing a kinſman*, and without any further meaning; for it is troubleſome to eſtabliſh a diſtinct regal duty, while the text may be explained as a mere repetition of a meaning which was obvious. It ſhould not be argued, becauſe a direct precept is preferable to a vain repetition, that it is therefore neceſſary to eſtabliſh *it* a royal duty *to appoint the ſubſtitute*, ſince the text would be otherwiſe unmeaning: were it ſo, ſince another is commanded to perform the work in default of the heir, and, if he be unable to perform it, all the partners being bound to undertake it, the laſt caſe is ſuperfluous; but there is nothing ſuperfluous if it convey a *general* precept, ſince no objection exiſts *to ſuch an interpretation*. If the man himſelf be unable to act, a ſubſtitute muſt in all caſes act for him; and, if there be no heir, any perſon may be appointed under the text

of YÁJNYAWALCYA; or if none be appointed, the heirs, or others included in the partnerſhip, are declared by NÁREDA to be the proper ſubſtitutes: but if the partner die, the rule of deciſion is delivered in the ſubſequent texts, "If any travelling merchant, &c." (XX).

This expoſition ſeems accurate: let it be examined by the wiſe. We proceed to explain the texts of NÁREDA. "Coming from a foreign country" (XX); travelling from one country to another, or arriving in a foreign country. Conſequently ſuch is the rule, if a merchant die on the road, or in a foreign country: and this is merely an inſtance; *for* nearly the ſame rule of proceeding muſt be underſtood, if he die in his own country. MISRA reads *prēyād abhyágatō pi vā*, inſtead of *prēyād abhyágatō vanic*; the ſenſe is the ſame, and obvious. What king? The king in whoſe dominions the merchants have their abode? or the king into whoſe dominions they have come for the purpoſe of trade? The king in whoſe dominions they trade is conſidered as their ſecond king, becauſe he receives taxes and protects them: therefore that king, hearing of a merchant's death, ſhall preſerve his ſtock, and ſend intelligence of his death to the heirs, by means of a meſſenger. This is inferred from the expreſſion 'until his heir appear.' If there be an heir, the property of another is like poiſon to the king who appropriates it; therefore he ſhould immediately relinquiſh it. When the heir appears, what is to be done? The ſtock ſhould be delivered to him, otherwiſe his appearance is uſeleſs. The following text is explicit:

XXI.

VRÍHASPATI:—If one of the traders in partnerſhip happen to die, his ſhare in the ſtock muſt be produced before officers appointed by the king;

2. And when any man ſhall appear calling himſelf heir to the deceaſed, let him prove his right of ownerſhip by *the teſtimony of* other men, and then let him take his property.

" Officers appointed by the king," to receive taxes from foreign traders: before thoſe officers, as a channel of communication with the king, his ſhare of the ſtock muſt be produced by his aſſociates. " Heir to the deceaſed," ſuch as ſon or other perſon entitled to the ſucceſſion: let him prove his right, as ſon, kinſman, or partner, by the teſtimony of other men. NÁREDA declares the diſtinctions of title to the ſucceſſion (XX 2). If there be no kinſman in a direct line, let the king deliver it to perſons allied to the deceaſed, his wife, and the reſt: on failure of theſe, collateral kinſmen are entitled to receive it. CHANDÉSWARA ſays, " on failure of theſe, his collateral kinſman ſhall receive it:" and HELÁYUDHA ſays, " on failure of paternal kinſmen, the ſucceſſion devolves on the maternal uncle and the reſt." Conſequently the wife, the daughter, the daughter's ſon, the father, the brother, and the reſt, and the maternal uncle and other heirs mentioned under the head of Inheritance, are entitled *to receive the ſtock* in the regular order of ſucceſſion. In the text of NÁREDA (XX 2), " if no ſuch heir appear" ſignifies if the heir do not attend, or if it be proved that no ſuch heir exiſts.

If the ſtock be delivered to heirs, a part ſhall be retained by the king as a recompenſe for his care of it. VRÝHASPATI ordains it.

XXII.

VRÝHASPATI:—Let the king receive a ſixth part from the property of a *Súdra;* a ninth from that of a *Vaiſya;* a twelfth from that of a *Cſhatriya;* a twentieth from that of a *Bráhmana:*

2. But after three years have elapſed, if no owner of the goods appear, let the king take the whole; but the wealth of a *Bráhmana* he muſt beſtow on *Bráhmanas.*

A ſixth part and ſo forth from a *Súdra* and the reſt in order as enumerated; for it is a rule, that terms mentioned conſecutively are ſeparately referred *to the correſpondent terms:* conſtruction by *the* correſpondent order *of terms* may be exemplified as it has been

uſed

uſed by a great poet, and in other inſtances: "the charms of the lyre, of the wreath of jaſmine, of the blue lily, are ſurpaſſed by her delightful voice, her ſmiles, and her enchanting glance." Conſequently the king ſhall receive a ſixth part from a *'Súdra*, a ninth part from a *Vaiſya*, and one part in twelve from a *Cſhatriya*.

How can it be ſaid that any part ſhall be received from the property of a *'Súdra*, ſince commerce is forbidden by MENU to a *'Súdra* as a man of inferior claſs?

MENU:—A man of the loweſt claſs, who, through covetouſneſs, lives by the acts of the higheſt, let the king ſtrip of all his wealth and inſtantly baniſh.

For commerce is declared to be the profeſſion of a *Vaiſya*, whoſe claſs is ſuperior to that of the *'Súdra* (Book I, V. iv). It ſhould not be argued, that the text of MENU ſuppoſes times free from diſtreſs. MENU, permitting *Bráhmanas* to follow trade in times of diſtreſs, forbids the ſale of liquids, &c. (Tranſlation of MENU, Chap. X, V. lxxxvi); declaring the means of ſubſiſtence for a military man in times of diſtreſs, he forbids his recourſe to the higheſt function (ibid. V. xcv); and, ſubjoining the text quoted, MENU expreſsly directs, that a man of the loweſt claſs, who lives by the acts of the higheſt, even in times of diſtreſs, ſhall be puniſhed by the king.

To this it is anſwered, that the text muſt be underſtood of a profeſſion different from that of the *Vaiſya*. Thus the text of YÁJNYAWALCYA is pertinent, "a *'Súdra* ſhould ſerve twice-born men; but if he cannot thus ſubſiſt, he may become a trader:" and the profeſſion of a huſbandman is allowed to the *'Súdra* by the *Neraſinha purána*, "let him rely on agriculture for his ſubſiſtence." On this ground the practice of money-lending by a *'Súdra* has been mentioned in the firſt book, on Loans and Payment. In fact, at this time, men of the commercial claſs being few, though a diſtinction has been ordained, their occupations are followed by *Bráhmanas* and by men of mixed claſſes. The rank of a *'Súdra* being attributed to *degraded* men of the military and commercial claſſes and to men of mixed claſſes, and RAGHUNANDANA acknowledging that they become *'Súdras* by the neglect

glect of their proper duties, it is fit that a ſixth part ſhould be received by the king from them alſo. If men of the *Ambaſhtha*, *Múrdhábhiſhicta* and other claſſes, who claim the rank of *Vaiſya* and *Cſhatriya*, have not for many generations performed the ceremonies ordained by the *Véda*, in the form obſerved by *Súdras*, or if they revert to the duties of their own claſs after expiation, the rate of the deduction ought to be regulated accordingly. But RAGHUNANDANA acknowledges that a military man, though not of a mixed claſs, may be degraded to the ſervile claſs, under the text of MENU *, in which he expounds "gradually," by ſmall degrees; "ſervile claſs," the rank of a *Súdra*; and "*Bráhmanas*," the ſcripture.

MENU:—The following races of *Cſhatriyas*, by their omiſſion of holy rites, and by ſeeing no *Bráhmanas*, have gradually ſunk among men to the loweſt of the four claſſes.

RAGHUNANDANA alſo admits the ſame in regard to men of the commercial and other claſſes. But this is not the opinion of CULLÚCABHATTA. Some perſons of the *Ambaſhtha* and other claſſes, obſerving the duties and aſſuming the title of a *Cſhatriya* or *Vaiſya*, act as men of the military and commercial claſſes; ſome act as perſons of the ſervile claſs; and ſome follow the profeſſion of their mother's claſs. The deciſion ſhould be regulated by uſage, or by the opinion of RAGHUNANDANA. More on this ſubject may be ſought under the title of Mixed Claſſes.

"But, after three years have elapſed, if no owner of the goods appear" (XXII 2): if the perſon, *to whom notice is given*, ſend a meſſage that he is ſick, and will ſubſequently attend; or ſend a meſſage, or himſelf ſay, that the deceaſed has left a grandſon, who will ſubſequently attend; but if no heir do appear, then let the king take the whole; but the wealth of a *Bráhmana* he muſt beſtow on other *Bráhmanas*: ſo the *Retnácara*. The meaning is, that as the heritage of a *Bráhmana* cannot be taken by the king, ſo, even in this caſe, he may not appropriate the eſcheat.

XXIII.

* Erroneouſly cited as a text of NA'REDA. I find it in MENU, Chap. X, V. xlii.

XXIII.

MENU :—The property of a *Bráhmana* ſhall never be taken *as an eſcheat* by the king; this is a fixed law: but the wealth of the other claſſes, on failure of all *heirs*, the king may take*.

2. Let the king take all property, to which there is no heir, except that of a *Bráhmana:* but let him beſtow the wealth of a *Bráhmana* on prieſts learned in the *Védas.*

If that be the caſe, how is he permitted to receive a twentieth part from the property of a *Bráhmana?* It ſhould not be argued that there is no offence, becauſe it is received as wages: it is merely implied in the text quoted (XXIII 1), that the property ſhall not be taken, on the ſuppoſition of a title *to inherit ſuch property;* but the king may even ſell the ſtock to a *Bráhmana.* Were it ſo, taxes being the wages of protection, even the receipt of taxes from a prieſt would be admiſſible. Therefore does MENU forbid it.

That is denied; for taxes are not the wages of protection, but are received by the king becauſe he has a title in the ſoil. Nor ſhould it be objected, that they ſometimes appear to be his wages, like ſacrificial fees *paid to prieſts.* Sacrificial fees are not real wages; if they were, there would be no diſtinction of fees for two ſacrifices equally laborious. It is diſhonourable in a king, any-how receiving taxes, not to protect *all his ſubjects;* as it is in any man to omit the rites preſcribed to his claſs, at dawn, noon, and eve.

Does not the king receive his revenue from the perſon who enjoys the produce of a ſoil in which the king has an intereſt, as he receives hire of *his own* houſe or chattel from the perſon who uſes it? The law has prohibited the taking of ſuch wealth belonging to *Bráhmanas;* for the property of a deceaſed *Bráhmana,* acquired by commerce, his heritage and debts, might *otherwiſe* be

* Book V, V. ccccxliii.

be received on account of the intereſt the king has in the ſoil: but it is admitted, that the king has an original property by occupancy, in his own houſe *now* let on hire; not merely a property as king: conſequently, he muſt avoid taking a *Brâhmana's* wealth, in right of a property in it as king. This ſubject has been ſufficiently explained. But if the wealth of a deceaſed *Brâhmana* be not accepted by *Brâhmanas*, then let the king caſt it into water (Book I, V. ccxxxi 2).

In the third verſe of NÁREDA (XX 3) "property without an owner" is explained by CHANDÉSWARA, property the owner of which is deceaſed: "without a claimant as heir," without a claimant entitled to receive it. It muſt be underſtood of all perſons, other than the king, who are entitled to ſucceed, including the fellow ſtudent in theology, as declared almoſt expreſsly under the title of Inheritance.

XXIV.

NÁREDA:—What is ordained concerning one of ſeveral *perſons or things*, whoſe nature and properties are the ſame, muſt be extended to all; for they are pronounced ſimilar.

The periods of detention, three years and ten years, are contradictory (XX 2 and XXII 2). The following text again propounds a different period;

XXV.

BAUDHÁYANA:—Property without an owner, which had not belonged to *Brâhmanas*, the king may take for himſelf, having kept it one year.

"Which had not belonged to *Brâhmanas*;" which belonged to any other than a *Brâhmana*, that is, to a *Cſhatriya*, and ſo forth.

CHANDÉSWARA thus reconciles the apparent contradiction, *in regard to the period of detention, one, three, and ten years*; the period is proportioned to the time required for the heir to appear, according

according to the remoteneſs of his reſidence, diſtant, more diſtant, or moſt diſtant: and MISRA gives a ſimilar expoſition.

What is diſtant? what, more diſtant? and what, moſt diſtant? It cannot be ſaid, that, if the heir reſide in the king's own dominions, his reſidence is ſimply diſtant; in another realm immediately adjoining, more diſtant; or, if another kingdom intervene, moſt diſtant. At the time when one merchant died, a foreign realm intervened between the king's dominions and the town whence that merchant came: ſince he was ſettled at the greateſt diſtance, his ſtock muſt be kept ten years. Afterwards, that king happening to conquer both realms, and ſome merchant from the ſame town dying, his ſtock may be appropriated after keeping it one year, ſince the place is now included in the king's own dominions. This would be a great diſparity.

The difficulty may be reconciled on the opinion of RAGHUNANDANA, delivered in the *Udváhatatwa*, in explanation of the term "different country."

XXVI.

Vṛĭhat-MENU:—Where language differs, and where a mountain or great river intervenes, it is called a different country.

2. However near, countries parted by a river of the ſame name are called diſtinct countries by the Self-exiſtent himſelf:

3. And ſo *are countries* whence intelligence is not received in ten nights.

XXVII.

VṚĬHASPATI:—Some call the ſpace of ſixty *yójanas* a diſtinct country; ſome, the ſpace of forty *yójanas*; others again, the ſpace of thirty *yójanas*.

To reconcile the diſtinctions grounded on language and on diſtance, RAGHUNANDANA thus explains the texts: if the three *circumſtances*

cumſtances of difference exiſt, *the countries are diſtinct* within the diſtance of thirty *yójanas*; or if two exiſt, and the diſtance be greater than thirty *yójanas*; or if one exiſt, and the diſtance be not leſs than forty *yójanas*: but within ſixty *yójanas*, if the language does not differ, nor a mountain or great river intervene, it is not a foreign country: ſo the *Suddhi Chintámeni*.

Conſequently this is intended by the term diſtant: if two *of the circumſtances mentioned* exiſt, and the diſtance exceed ſixty *yójanas*, the country is more diſtant; and if the three exiſt, moſt diſtant: but one of thoſe circumſtances muſt almoſt ever occur where the diſtance exceeds ſixty *yójanas*. "However near, &c." (XXVI 2); however near, (within the ſpace of forty *yójanas*;) if the name of the countries differ, and a river intervene, they are called different countries. Some thus explain the texts. But others hold, that, if a river, or large body of water, of the ſame name with the countries, intervene, (ſuch as the river *Sindhu* and others,) the countries, however near, are called diſtinct countries; thus the eaſtern bank of the dangerous river *Sindhu* is a different province from the weſtern bank, both provinces bearing the ſame name with the river: and ſo *Pánchanada, or the region of five rivers*, (meaning the *Sindhu* and other ſtreams,) is the name of a country.

"And ſo, whence intelligence, &c." (XXVI 2): this muſt be underſtood as a deſcription ſimilar to the diſtance of ſixty *yójanas*. Or it may be thus explained: a place within a country of the ſame name is diſtant; no other country intervening, a bordering province is more diſtant; another country intervening, the remoter province is moſt diſtant: thus north *Rá'd'ha** is diſtant from ſouth *Rá'd'ha*; *Magad'ha* is more diſtant; *Cáſi*, moſt diſtant. Many other caſes may occur, but theſe may be ſettled in a ſimilar mode under the texts quoted.

What is the rule if the merchant's place of abode were near? The ſtock muſt be kept ſo long as the heir be expected to appear. In fact, on all occaſions, ſufficient time ſhould be allowed: a ſpecifick period is merely mentioned illuſtratively. The king may appropriate the ſtock of a deceaſed trader, at the expiration of one year, after aſcertaining from his kinſmen in the ſame town, that there is no heir in a diſtant country, if it were ſuppoſed that ſuch an heir exiſted. But if it happen that an heir afterwards appear,

* Pronounced *Rár*; the region weſt of the *Bhágírat'hí* river.

appear, and, proving his right of inheritance, claim the ſtock, what ſhall be done in that caſe? Without relying on the king's property in that ſtock, it ſhould be delivered to that heir, even though it have been given to ſome other perſon; for a gift without ownerſhip is void. Let it not be objected, that the king is conſequently guilty of theft; for there is no theft in diſpoſing of property, not knowing it to belong to another.

Shall the king pay intereſt or not? He ſhall not pay intereſt; the text of SAMVERTA (Book I, V. lxxii) forbidding intereſt on a ſum which was not originally known to be due.

It muſt be noticed, that a ſpecifick time is appointed by Sages for the cuſtody of ſtock by the king; but no ſpecified period being appointed for the cuſtody of it by a partner or a ſtranger, the principal ſtock would be annihilated if ſuch perſon were entitled to a tenth part of it for every moment of its cuſtody: therefore one tenth part of it ſhall be received for the cuſtody of the ſtock until it be ſold; but if it be abandoned in the interval, wages only ſhall be received. If it happen that the goods are ſold the next day after they were bought, a tenth part ſhall be received even for one day's cuſtody; and the ſame allowance muſt neceſſarily be admitted, even for one year's cuſtody, if the ſale be made at that interval of time; for no ſpecifick period having been appointed for cuſtody, a ſhare cannot be allowed on that account. Cuſtody by the king has been ordained, not the tranſaction of buſineſs regarding the ſtock; but if the buſineſs be tranſacted by the king's own choice, through the channel of his officers, he ſhall receive a greater proportion of the ſtock.

SECT. II.—*On Partnerſhip among Prieſts jointly officiating at holy Rites.*

XXVIII.

NÁREDA:—Should a prieſt officiating at holy rites be

be diſabled, let another in like manner perform his work, and receive from him the ſtipulated ſhare of the gratuity.

" Diſabled;" the term is ſo explained in the *Retnàcara* and *Vivâda-Chintâmeni*. The expreſſion " in like manner," extends the law of commerce to this caſe: but in commerce, if one partner be diſabled, his work ſhall be performed by another; and RAGHUNANDANA, in the *Malamâſa tatwa*, admits the extenſion of the law for ſecondary caſes to the primary or principal caſe. In the former text (XVIII) the ſame word ſignifies " diſabled;" and the ſequel expreſſes, that " the heir ſhall undertake the work." The expoſition therefore appears accurate.

" Another;" his ſon or other heir; on failure of an heir, a partner able to perform the work; or if there be none ſuch, a ſtranger. This muſt be underſtood, as it has been already declared *in the preceding ſection*: but the ſubſtitute does not receive wages as in commerce, for he would be a hireling if he received wages generally; and a reward equal to a tenth part is not proper in this caſe. Thus a prieſt, engaged in a ſacrifice, falls ſick after the firſt day; afterwards, a ſubſtitute performs his work during ten days; if the ſubſtitute received a tenth part, and the prieſt firſt engaged received the whole of the reſidue, their rewards would be very diſproportionate: but in commerce there is no ſuch diſproportion, for the ſubſtitute is paid by the trader out of his own ſtock. On this conſideration the Sage propounds the reward: " and receive from him, &c.;" meaning, that the law of commerce is not extended to this part of the caſe.

" Stipulated;" what has been ſtipulated by the ſubſtitute for the performance of the work, and has been promiſed by the prieſt who was firſt engaged.

XXIX.

VRĬHASPATI:—So, if one of ſeveral perſons, jointly engaged in *ſacrificing or other* work, ſhould be diſabled from acting in it, let his part of it be performed

performed by a kinſman, or by all the other aſſociates.

" Work ;" ſacrifice or the like. The *Retnácara.*

MISRA inſerts this text with an obſervation, that " VRĬHASPATI declares the law generally." It is inſerted by both, under the title of Prieſts officiating at holy rites: the inference will be mentioned.

So, if one of ſeveral perſons jointly engaged in commerce or other buſineſs by a man diſqualified through incapacity or otherwiſe, ſhould be diſabled from acting in it, his part of it ſhould be performed by a kinſman; or, on failure of a kinſman, by all the other aſſociates. Such is the meaning of the text.

It may be ſo in commercial caſes; but how ſhould that be done in the inſtance of a ſacrifice? for, a ſacrifice being performed for the benefit to accrue therefrom, it is contrary to rule that the work of one ſhould be performed by another; and two ſuch rites cannot be performed at once by the ſame perſon, ſince it is forbidden to perform at once two rites of a different nature. The anſwer is, it may be performed according to the diſtinctions of ſacrifice: if a hundred thouſand ſacrifices be undertaken, five or ſix perſons being engaged to officiate as *Hôtá*, or reader of the *Rĭgvéda*, ſhould one be diſabled, his part of the work may be performed by the others; and all admit that the *Hôtá* may officiate as *Brahmá*, or ſuperintending prieſt.

If this text, expreſſing work generally, be conſidered by MISRA as relating to all caſes, whether commercial or otherwiſe, why has it not been inſerted in the firſt ſection on Partnerſhip among Traders? The anſwer is, it is inſerted here to ſhow that ſuch a rule exiſts in regard to partnerſhip among prieſts officiating at holy rites. It ſhould not be objected, that this text relates to commerce only, becauſe it coincides with the text of NÁREDA on the ſubject of commerce (XVIII). Its application to holy rites, deduced from the comprehenſiveneſs of the expreſſion, cannot be abandoned; and all difficulties are removed by admitting this rule in partnerſhip among officiating prieſts. SANC'HA and LIC'HITA concur alſo in directing the ſubſtitution of a kinſman.

XXX.

SANC'HA and LIC'HITA:—If an officiating prieſt die before the ſacrifice be completed, his kinſman ſprung from the ſame original ſtock, or his pupil, ſhall complete his part of the work; but if he have no kinſman, let another prieſt be engaged.

It is implied, that his kinſman, or pupil, ſhould complete his part of the work as a favour conferred on him: if they do not perform it, another perſon muſt be ſought. The next in ſucceſſion need not be ſelected, as in caſes of inheritance; for the ſame rule *of ſubſtitution* is applied by VRĬHASPATI to the other aſſociates, and the law is the ſame in commercial caſes. But if they require a ſhare of the gratuity, it muſt of courſe be given.

Is not the text ſuperfluous; for, the general law requires that, if the father be diſabled, the ſon muſt perform what ſhould have been done by him? No: for, ſhould the ſacrificer ſay, "this man has fallen ſick, I appoint another to perform his part of the work, his ſon ſhall not perform it;" the text would ſerve to prevent ſuch conduct. It therefore appears, that, if a prieſt engaged to officiate at ſolemn rites be diſabled, the ſubſtitute ſhould be appointed by him. The prieſt being bound to perform the rites by an engagement in this form, "I will act according to the beſt of my knowledge;" ſhould he be diſabled, it is proper that he ſhould provide the ſubſtitute; otherwiſe he would be guilty of a moral offence, not effecting the work he had engaged to perform: and it muſt be underſtood that the form of appointment is this: "I engage you to perform ſuch a work undertaken by me."

XXXI.

YÁJNYAWALCYA:—A man of crooked ways let the other partners expel without profit; and let a partner unable to act appoint another man to act for him: this law is declared for partnerſhip among

among prieſts who jointly officiate at holy rites, and among huſbandmen or artificers.

This ſhows, that the perſon unable to act ſhould make the appointment: in commerce, the ſubſtitute ſhould be choſen by him, not by the other partners; and that law being extended to partnerſhip among prieſts by the terms of the text, it appears that the perſon who is unable to act ſhould appoint the ſubſtitute.

VÁCHESPATI BHATTÁCHÁRYA holds, that another prieſt ſhould be engaged by the ſacrificer, if the prieſt firſt engaged be defiled; for his defilement diſqualifies him for appointing a ſubſtitute. Even in other ſimilar caſes, another prieſt ſhould be appointed by the ſacrificer. But it is not incongruous to ſay, that another prieſt ſhould be appointed with the approbation of the prieſt firſt engaged.

If the ſon or pupil of the perſon who is unable to act be not equally ſkilled with the father in performing the rites undertaken, the ſacrificer may reject him: ſuch is the induction of common ſenſe. But if the perſon appointed by the officiating prieſt be equally capable with himſelf, he ſhould not be rejected: or if the ſacrificer cannot produce a perſon ſuperior to him who was ſelected by the officiating prieſt, then alſo the perſon engaged by the officiating prieſt ſhall perform the work: or ſhould the officiating prieſt provide a ſubſtitute equal to himſelf, and the ſacrificer provide one ſuperior to him, even then the perſon provided by the officiating prieſt ſhall perform the work; for it is not proper that the ſacrificer ſhould now require a perſon of ſuperior qualifications. In the ſame mode, further rules may be eſtabliſhed.

XXXII.

MENU:—If an officiating prieſt, actually engaged in a ſacrifice, abandon his work, a ſhare only in proportion to his work done ſhall be given to him, by his partners in the buſineſs, *out of their common pay.*

If he abandon his work, by reaſon of ſickneſs or the like, a ſhare of the ſacrificial fee ſhall be given to him in proportion to his work done. The *Retnâcara.*

So likewiſe VÁCHESPATI and CULLÚCABHATTA. But if he wickedly abandon his work, a diſtinction is taken, which will be mentioned.

XXXIII.

MENU:—But if he diſcontinue his work *without fraud,* after the time of giving the ſacrificial fees, he may take his full ſhare, and cauſe what remains to be performed by another prieſt.

In ſacrifices and other holy rites celebrated according to the forms of MADHYANDINA, the fees are directed to be paid in the middle of the ceremony. In ſuch a caſe, if an officiating prieſt be diſabled after the payment of the fees, he may take his full ſhare, and cauſe the work to be completed by another. Such is the expoſition of CULLÚCABHATTA; but MISRA, giving the ſame expoſition, explains "another prieſt," a ſon, &c.: this, however, may be underſtood as alſo intended by CULLÚCABHATTA.

"His full ſhare;" his ſhare on a partition with the other officiating prieſts. If there be no ſon, what ſhall be done? It ſhould not be ſaid that cauſing the work to be performed by another, the diſabled prieſt ſhould give him wages; or if he perform it as a favour, there is no objection to the omiſſion of wages: but the expreſſion "he may take his full ſhare," ſuppoſes the work to be completed by his own ſon. Were it ſo, the text would be ſuperfluous. Nor ſhould it be ſaid that the text intimates this diſtinction; if the diſability ariſe before the fees are paid, the ſacrificer ſhould engage another prieſt, and, dividing the gratuity, pay a ſhare to each; but if the fees have been paid, the prieſt who has received his fee may appoint another ſelected by himſelf. There is no ground for a diſtinct preferable right of the officiating prieſt and ſacrificer, to appoint the ſubſtitute before, or after, the payment of the fee. Until the ſacrifice be completed, there is apprehenſion

prehenſion of failure in the ceremony; elſe what remained, need not be performed.

To this queſtion ſome reply, the fee received by the officiating prieſt becomes his abſolute property. How ſhould the ſubſtitute, afterwards completing the work, be entitled to receive a ſhare of it from him; for the ſacrificer's act of religion would be impaired, if he gratified one prieſt out of the property of another? Therefore ſhould a perſon different from the ſon or other heir complete the work, he is entitled to receive ſome additional recompenſe from the ſacrificer. The fee for a ſpecifick part of the ceremony having been already paid, how ſhould a gratuity be afterwards payable to the ſubſtitute, ſince it is not ordained by the law? This objection is wrong; for the general law ſhows that fees ſhould be paid by way of recompenſe.

XXXIV.

Purána:—The man who obtains, by falſe pretences, a *Bráhmana's* recital *of holy texts*, or pays not the due reward, will certainly go to a region of torment.

This is moral law, not the law of judicial procedure; conſequently, ſhould the ſacrificer defy hell, whence ſhall the ſubſtitute who completes the work obtain his wages? Labour unrewarded is not conſiſtent with judicial law. Should he not therefore receive a recompenſe from the officiating prieſt? and even though a gratuity be given to him by the ſacrificer, ſhall he not receive a ſhare of the fee from the officiating prieſt? Since MENU directs that the prieſt firſt engaged may take his full ſhare, a fee by way of recompenſe from the employer, being required by moral law, ſhould alſo be eſtabliſhed as requiſite under the law of judicial procedure; for the text intends it. But when a ſon is the ſubſtitute, he is ſufficiently recompenſed by the gratuity paid to the father; conſequently there is no difficulty, even though another fee be not paid.

The ſubſtitute ſhould be appointed by the officiating prieſt, even in this caſe (namely, where the fees have been already

paid); for he has agreed to perform the work: but if the prieſt, not afraid of violating his engagement, refuſe to appoint another perſon, let the ſacrificer engage another prieſt, that his buſineſs may be effected; whether it be a ſacrifice according to the forms of MADHYANDINA, or other ſolemn rites, ſuch as the *jyótiſh-tóma* and the like. In this caſe, if the fee have not been already paid, the ſhare ſhould be ſubdivided; but if it have been paid, it is obvious *that the full ſhare ſhall be retained, and a ſeparate recompenſe be given to the ſubſtitute.*

It ſhould not be argued, that the act is perfect at the moment when the ſacrificer has engaged the prieſts. As hunger is not ſatisfied before victuals are prepared, merely by commencing their preparation; ſo the benefit of ſolemn rites, yet unperformed, is not ſecured by the mere undertaking.

Payment of fees in the middle of the ceremony is now practiſed, in conformity with the opinion of RAGHUNANDANA, at the *Durgápújá*, and other feſtivals: the ſame form ſhould be there obſerved in regard to the appointment of prieſts; for the reaſon of the law is equally applicable.

MENU himſelf propounds the ſhares in particular ſacrifices, as an example of the diſtribution of fees, to which the expreſſion "his full ſhare" alludes.

XXXV.

MENU:—Where, on the performance of ſolemn rites, a ſpecifick fee is ordained for each part of them, ſhall he alone who performs that part receive the fee, or ſhall all the prieſts take the perquiſites jointly?

2. *At ſome holy rites*, let the *Adhwaryu*, or reader of the *Yajurvédá*, take the car, and the *Brahmá*, or ſuperintending prieſt, the *fleet* horſe; let the *Hótá*, or reader of the *Rígvéda*, take the *other* horſe, and the *Udgátá*, or chanter of the *Sámavéda*, receive the carriage, in which the purchaſed materials of the ſacrifice had been brought.

3. *A*

3. *A hundred cows being diſtributable among ſixteen prieſts,* the four chief, *or firſt ſet,* are entitled to *near* half, *or forty-eight;* the next four, to half of that number; the third ſet, to a third part of it; and the fourth ſet, to a quarter.

At thoſe ſolemn rites, in which ſpecifick fees are ordained to be paid for each part of them at the commencement and ſo forth, ſhall he alone, for whom the fee is paid, take it; or ſhall he receive a deduction only, and all the prieſts take and divide the perquiſites? On this doubt, the legiſlator propounds this text (XXXV 1). CULLÚCABHATTA.

"He alone who performs that part ſhall receive the fee;" where ſpecifick fees are ordained by law for each part of the rites, payable to the perſons officiating as *Brahmâ* and ſo forth, they ſhall receive thoſe ſeveral gratuities, whatever be the amount; and not throw the fees together, and divide the whole. The import of the ſubſequent phraſe, "take the perquiſites jointly," will be explained hereafter. How much ſhall be the fee, for whom, and at what ſacrifice? To illuſtrate this, he himſelf inſtances one caſe: on preparing the ſacrificial fire for thoſe who follow certain *śâc'hâs* of the *Vêda,* a car ſhould be given to the *Adhwaryu;* a fleet horſe to the *Brahmâ;* and the carriage in which the moon-plant was brought to the *Udgâta:* therefore, leſt the *perſpicuity of the* rule be obſcured, whatever fee is directed on whatever account, *that, and* no other, ſhall be paid. So CULLÚCABHATTA.

"Thoſe who follow certain *śâc'hâs* of the *Vêda;*" thoſe who ſtudy certain *śâc'hâs* of the *Vêda.* "On preparing the ſacrificial fire;" on preparing it for oblations to fire.

The *Adhwaryu* and the reſt are diſtinct officiating prieſts, whoſe duties are well known. The *Brahmâ* and others ſhall not have a ſhare of the car; nor the *Adhwaryu* and the reſt, a ſhare in *the value of* the *Brahmâ's* horſe. CULLÚCABHATTA mentions a *fleet* horſe, to ſhow the relative inferiority of theſe prieſts in the order in which they are mentioned. If there be no ſpecifick fee for each part of the rites, a partition ſhall be made as ſuggeſted by the text, "all the prieſts *ſhall* take the perquiſites

jointly." He ſtates a caſe as an inſtance of partition: where four ſets of prieſts officiate, the ſecond ſet is entitled to half of what is receivable by the chief ſet, and ſo forth. The third ſet is entitled to a third of what is receivable by the firſt ſet, not to a third of the whole; for the firſt and ſecond ſet having received three fourths, a third of the whole cannot be paid out of a quarter only. Therefore the text muſt be underſtood to mean a third of what is receivable by the firſt ſet: hence it amounts to ſomething more than half a quarter added to a quarter of this fraction; and more than three quarters added to half a quarter of the whole ſum have been diſtributed: a trifle remains, ſomewhat leſs than half a quarter; but the fourth ſet ought to receive a quarter of half the ſum, or a quarter of the ſhare receivable by the chief ſet; that is, half a quarter of the whole: yet there remains not ſo much. This difficulty is reconciled by CULLÚCABHATTA, CHANDÉSWARA, VÁCHESPATI MISRA and others. The word *arddha* in the maſculine gender is employed in the ſenſe of a part in general, whether more or leſs *than half*, as noticed by AMERA; from the context, it muſt of courſe ſignify ſomething leſs than half; and it ſignifies a part *nearly* equal *to half*, for it is a rule, that equal parts are underſtood when the proportion is not ſpecified; thus they reconcile the diſtribution. At the *jyótiſhṭōma*, ſixteen officiating prieſts are required by the law: there the *Hótá*, *Adhwaryu*, *Brahmá* and *Udgátá*, are the four chief perſons, *or firſt ſet*, entitled to half the fee; and the fee, directed by holy writ, conſiſts of a hundred cows: an equal part would amount to fifty; ſomething leſs than that, or forty-eight cows, ſhall be received by the *Adhwaryu* and the reſt. The next, namely the *Maitrávaruni*, *Preſtótá*, *Bráhmenáchchh'hanſi*, and *Pratipreſtōta*, who are entitled to half of what is received by the firſt ſet, according to all readings of the text, (which differ in form, not in ſubſtance *,) ſhall receive twenty-four cows; the difficulty being here reconciled by allotting ſomething leſs *than a quarter.*

* *Tad arddha bhájah*; entitled to half of that number; to half of that half, a phraſe ſimilar to that of "ſkreened by a ſkreen." MISRA reads *tad arddhinah*; and notices another reading *d'witiyinah*: the laſt is however pertinent, for the term may well ſignify entitled to one part in two. The firſt reading is approved by CHANDE'SWARA and CULLU'CABHATTA. [*I have transferred theſe remarks from the text to a note, for the ſake of avoiding too long an interruption of the ſentence.*] T.

quarter. The third ſet, conſiſting of the *Achch'hâvâca*, *Néſhtá*, *Agnid'hra*, and *Pretîhertá*, ſhares a third part of what is receivable by the firſt ſet, or ſixteen cows; and eighty-eight cows have been thus diſtributed: the fourth ſet, conſiſting of the *Gráva*, *Unnéta*, *Pótá*, and *Swabrâhmanya*, ſhares a quarter of what was receivable by the chief ſet, or twelve cows: thus the hundred cows are diſtributed. The ſame form is to be underſtood in all caſes.

Adhwaryu, *&c.* are ſixteen denominations of perſons engaged for the ſeveral parts of the ſolemn rites of ſacrifice and ſo forth, explained in the law concerning religious ceremonies. Diſputes among them occur at the time of appointment, not at the time of diſtributing the fees; for the law has obviated diſputes concerning the diſtribution. Each ſhould be appointed to that part of the ceremony for which he is qualified; or he may be admitted, through favour, to an office for which he is leſs fit.

The diſtribution of cows at the *jyótiſhtóma*, as mentioned by CULLÚCABHATTA and others, is not merely grounded on the reaſon of the law; but the law itſelf ordains ſuch a diſtribution.

XXXVI.

SRAUTA CÁTYÁYANA:—Twelve to each of the firſt ſet, ſix to each of the ſecond, four to each of the third, and three to each of the laſt.

This ſuppoſes four prieſts in each ſet. It muſt be noticed, that if prieſts be engaged for the firſt and ſecond ſets, and the others be perſonated by graſs*, the whole fee ſhould be divided into three parts, of which two ſhould be given to the chief ſet, and one to the ſecond: for the law ſhows, that the ſecond ſet ſhould have half the quantity received by the firſt. So, if the firſt and third ſets only join in the work, the fee ſhould be divided into four parts; of which three ſhould be given to the firſt ſet, and

* When a religious ceremony is performed by a ſingle prieſt, he places on his right hand fifteen blades of *cus'a* graſs, to perſonate the ſuperintending prieſt: and at rites, which ſhould be performed by four or by ſixteen prieſts, the repreſentatives of ſome of them are ſimilarly made of graſs if the number of perſons attending be inſufficient.

and one to the third: or, if the concert be only between the firſt and fourth ſets, the fee ſhould be divided into five parts, of which four ſhould be given to the firſt, and one to the fourth ſet: if the ſecond and third ſets only unite in performing the rites, the fee ſhould be divided into five parts; of which three ſhould be given to the ſecond ſet, and two to the third. If the ſecond and fourth ſets only officiate, the diſtribution is the ſame which is made when the firſt and ſecond only act. If the third and fourth ſets only officiate in the joint work, the fee ſhould be divided into ſeven parts; of which four ſhould be given to the third ſet, and three to the fourth: ſo if the firſt, ſecond, and third ſets act together, the fee ſhould be divided into eleven parts; of which ſix belong to the firſt ſet, three to the ſecond, and two to the third: if the firſt, third, and fourth ſets only officiate together, the fee ſhould be divided into nineteen parts; of which twelve belong to the firſt ſet, four to the third, and three to the ſecond: if the firſt, ſecond, and fourth ſets only act together, twenty-eight ſhares ſhould be diſtributed; of which ſixteen to the firſt ſet, eight to the ſecond, and four to the fourth: but if the ſecond, third, and fourth ſets only act together, thirteen ſhares ſhould be diſtributed; of which ſix ſhould be allotted to the ſecond ſet, four to the third, and three to the fourth. If one prieſt only be engaged for any one of the ſets, and the others of that ſet be perſonated by graſs, but a competent number of prieſts be engaged for the other ſets, then, whoever performs the work of a prieſt perſonated by graſs ſhall receive his ſhare. This rule muſt be admitted in regard to all the ſets; and the ſame method is applicable to other ſacrifices. In fact, at this time, and in this province, the employment of ſixteen officiating prieſts is little practiſed; but the employment of four, as directed in the *Grĭhya-ſangraha*, is frequent.

XXXVII.

The Grĭhya-ſangraha. — In gaming, in judicature, in holy faſts and ſolemn rites, a ſtranger ſees what eſcapes the obſervation of the principal; therefore,

2. Let

2. Let one be appointed to perform the work; let another hold the book; let a third expound queſtions; and thus let the buſineſs be conducted.

The firſt text declares the motive; in the ſecond verſe ſtrangers are diſtinguiſhed: "let one be engaged in the work," namely the ſpiritual teacher; and he officiates as *Brahmá*, or *ſuperintending prieſt*, at the performance of ſacrifice as a part of a ſolemn act of devotion. If the principal himſelf do not perform the ſacrifice, the ſpiritual preceptor officiates as *Hótá*, *preſenting the oblations*; and if the man himſelf do not perform the principal rite, he officiates as his ſubſtitute. One perſon holds the book; and a by-ſtander expounds queſtions.

By "ſtrangers" are denoted perſons who attend for any purpoſe at gaming and ſo forth; but in the performance of a ſacrifice, ſince a text ordains that perſons ſhould be engaged for every part of the buſineſs, their appointment by name to particular offices muſt be underſtood. Herein RAGHUNANDANA concurs; and the learned ſay, that a previous appointment made with civility muſt be underſtood. Conſequently, if it be ſuppoſed that it is ſolely meant to inſtance perſons engaged *for the performance of rites*, that is applicable to thoſe only who are enumerated. Therefore, they are thus counted; firſt, the perſon engaged for the ceremony, namely the *Brahmá*, for he is appointed to check the utterance of words unſuitable to the rites, and to notice what is done, and what is omitted. If the man cannot perform the ſacrifice himſelf, then the *Hótá* is alſo a perſon engaged for the ceremony; for he is employed to recite texts, and to offer the clarified butter. Both, being perſons engaged in the work, are comprehended in the ſame term. A ſubſtitute is of two ſorts, the *Hótá* and another perſon; we have therefore ſaid briefly, that both are comprehended in the ſame term, and that the employment of four officiating prieſts is proper. In fact, the *Brahma* or *ſuperintending prieſt* ſhould be conſidered as a ſtranger engaged in the work; for the *Hótá* and ſubſtitute cannot give more attention than the principal. Thus the *Brahmá* notices what is done, and what is omitted; a by-ſtander notes the form; and the reader

reader views the book, for the *Hôtá* cannot attend both to the book and the oblations; though, as repreſentative of the perſon for whom the ceremony is performed, he ſhould be conſidered as the principal *in the rites*.

Is not the reader alſo appointed for the rites? The term "appointed for the rites" muſt be underſtood as intending a perſon different from the reader, in like manner as one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only. Or the *Brahmá* is uſeful *and neceſſary* to preſerve *due obedience to* the commands of the *Vêdas*, that the rites may have their effect, as a peſtle *is neceſſary* to pound rice and other grain; but the reader is only employed, on the reaſon of the law, to hold the book. If a prieſt is not found for the employment, the *Brahmá* may be perſonated by graſs; but if the principal himſelf can remember the texts, the reader is not perſonated by graſs. Thus "appointed for the ceremony," ſignifies a perſon employed as requiſite to the effect of the rites.

"Let a third expound queſtions:" for example, when the *Hôtá* attends not, it is aſked, "what is the conſequence when the *Hôtá* does not attend?" Or, after the ſacrifice is begun, the reader ſays, "reſting your hands on the ground, name the Earth inaudibly." On hearing this direction, the *Hôtá*, placing his hands on the ground, aſks, "in this manner?" The by-ſtander *replies*; "even ſo," or, "not ſo." Such anſwer is the buſineſs of the by-ſtander, explained by AMERA, "he who ſhows the forms." Let the *Brahmá* ſuperintend the rites, noticing whether the *Hôtá*, through forgetfulneſs, do any thing contrary to proper form. Thus are four officiating prieſts employed. When the work is finiſhed, gifts ſhall be received by them from the perſon for whom the ſacrifice is performed; and thoſe gifts are called ſacrificial fees *(dacſhiná)*, becauſe of ability *(dacſhatwa)* to produce effect.

By whom ſhall the fee be received; by one perſon? or jointly by all? On this doubt it is directed, under the text of MENU (XXXVI), that the ſpecifick fee ſhall be received by him for whom it is ordained; but where no ſpecifick fee is ordained, it ſhall be ſhared among all the prieſts. With this the *Ch'handôga-pariśiſhta* diſagrees; for it excludes the reader and the by-ſtander, directing

directing the fees to be divided between the ſuperintending prieſt and the perſon who preſents the oblations.

XXXVIII.

The *Ch'handóga-pariś'iſhta:* — The reward which has been ordained for him ſhall be given to the *Brahmá*, or *ſuperintending prieſt*, when the buſineſs is completed; and where no reward is declared, let a *veſſel full of grain* or *púrna pátra* be given.

2. If another perform the office of ſacrificer, he ſhall take half the ſacrificial fee; but if the principal himſelf perform both offices, he ſhall give the fee to another perſon.

It cannot be argued, that, *Brahmá* being explained by RAGHUNANDANA, in the *Durgótſava tatwa*, as bearing the general ſenſe of a perſon who cauſes the rites to be performed, the reader is entitled to a ſhare of the ſacrificial fee; and, by parity of reaſoning, the ſame follows in reſpect of the by-ſtander alſo. In the expreſſion, "if the principal himſelf perform both offices," "both," referring to what has preceded, ſhows, that in the caſe of his performing both the office of *Brahmá* and *Hótá*, the fee ſhould be given to another perſon; and that argument would be inconſiſtent with what is written in the *Sanſcára tatwa*, "let him give the fee for the principal rite to the teacher who ſuperintends the rite; but if the *Hótá* be a different perſon from the ſacrificer, no ſpecifick fee being mentioned for their ſeparate offices, the *Brahmá* and *Hótá* ſhall ſhare the ſacrificial fee."

Some hold RAGHUNANDANA's meaning to be this: let all the prieſts ſhare the perquiſites, under the text of MENU (XXXV 1): but the text quoted (XXXVIII 1) is a general direction, which ſuppoſes a caſe where no reader is employed; for the difficulty is removed by interpreting "another perſon" (XXXVIII 2), another teacher by book: and this ſuppoſes a caſe where the ſacrifice is the principal rite; but if it be a ſecondary part of the rites

only, the *Brahmá* and the reſt not being employed in the principal ceremony, the fee for that ceremony ſhall be received by the reader, who is employed in it. Shall not the reader, being employed even in the ſacrifice, receive a ſhare of the ſacrificial fee? And, if this be admitted, is it not inconſiſtent with the rule, that "the *Brahmá* and *Hótá* ſhall ſhare the ſacrificial fee?" *The anſwer is*, where the ſacrifice is only a part of the ceremony, the reader not being excluded from the perquiſites of the principal rite, the fee for that ſacrifice, which is only a part of the ceremony, ſhall be received by the *Brahmá* and others employed in that alone: and here the reaſon of the law ſhows, that he only who is appointed to perform a ſpecifick work, ſhall receive the ſpecifick fee ordained for that work. If he do not cauſe that ſpecifick rite to be performed, ſtill may it not be ſaid, that there is no obſtacle to his receipt of the perquiſite, making it a rule that he who cauſes the principal work to be performed cauſes the part to be performed, as it is a rule that he who performs the principal work performs the part? *This queſtion is thus anſwered*, let him receive a ſhare of the ſacrificial fee; but, in the principal rite, let the ſubſtitute and the *Hótá* receive a ſhare of the gratuity allotted for that rite. The expreſſion "the *Brahmá* and *Hótá* ſhall ſhare the fee," is intended generally. Under the direction for a ſpecifick fee to the *Brahmá*, the ſacrificial fee is ſhared by all the prieſts. To remove the inconſiſtency with the *Ch'handóga-pariśiſhta*, may not the text of MENU be limited to the *jyótiſhtóma* and ſimilar ſacrifices? No; for MENU is declared pre-eminent by VRĬHASPATI, (Book V, V. cccxxxiii), and it is regular to explain the texts of other Sages according to that law. How ſhall the partition be made in this caſe? Not in the form directed by the text above cited, "the four chief are entitled to half, &c." (XXXV 3); for no mention is made, in this caſe, of chief, ſecondary, and ſubordinate prieſts. Let it not be objected, that ſuch mention is made in the text laſt cited, "let one be engaged in the work, &c." (XXXVII 2); for there is no difficulty in conſidering that text as merely intended for elucidation. To this it is anſwered, the numbers ſtated for the purpoſe of elucidation muſt be conſidered as ſatisfying that queſtion: and there, the ſuperintending prieſt and the perſon who preſents oblations are firſt; for they are ſubſtitutes for the principal, and

are

are together mentioned by RAGHUNANDANA as firſt. Thus the reader is entitled to half, and the by-ſtander to a third, of what is receivable by the ſuperintending prieſt, and by the *Hôtá*. Conſequently the ſuperintending prieſt and the *Hôtá* ſhall each receive three ſhares, and the reader a ſhare and a half, of the whole fee divided into eight ſhares and a half; the two chief prieſts receive equal ſhares, but the by-ſtander receives one ſhare only: however, ſhould there be ſeveral by-ſtanders engaged to attend the rites, the ſacrificer ſhould himſelf pay a gratuity to the others; for the text mentions one by-ſtander only, "let a third expound queſtions" (XXXVII 2).

Others again hold that the words of MENU, "all the prieſts take the perquiſites jointly," relate to rites which muſt be performed by four prieſts; for that is ſuggeſted by the ſubſequent text concerning ſolemn rites, where the plural number is uſed (XXXV 3). But the text of the *Ch'handôga pariſ'iſhta* relates to ſolemn rites performed ſolely by the *Brahmâ* or the like; and RAGHUNANDANA ſays, "it intends generally the perſon who cauſes the rites to be performed," meaning rites different from ſacrifice; for, even in that caſe the payment of fees being neceſſary, that is ſet forth in the expreſſion "when the buſineſs is completed."

It muſt be conſidered, that the words of MENU, "all the prieſts ſhare the perquiſites," ſhow a partition of perquiſites in all rites, ſince no diſtinction is mentioned: and, by the mention of the chief *or firſt ſet*, partition of the perquiſite is ſhown in ſolemn rites performed by ſixteen prieſts. The word *Brahmâ* being employed in the text above cited (XXXVIII), he only receives his fee when the ſacrifice is completed: and by parity of reaſoning, the ſame rule will have force in other caſes. There is no authority for limiting the ſenſe of the word *Brahmâ:* but if it be taken abſolutely, why may not he who cauſes the rites to be performed receive a ſhare of the perquiſites? It is fit that all the prieſts employed in the ſacrifice ſhould receive a ſhare of the perquiſites according to their employments.

Some remark on the text, "let him deliver the ſacrifick ſhed, and the furniture of it, to the officiating prieſt," that even the furniture of the ſhed muſt be divided. But there is no proof from any poſitive ordinance, or from ſettled uſage, that he who

cauſes

cauſes gifts to be made, has a title in all the chattels given at a diſtribution of alms. It is the current practice, for the ſacrificer to give ſeparate gratuities to the ſuperintending prieſt, to the reader, and the reſt. The ſenſe of the text quoted (XXXVIII 1) is this: whatever reward on whatever occaſion is *ſo* ordained by the law, (at ſome holy rites a cow, on another occaſion cloth, at other rites gold, and ſo forth;) that reward ſhall be given when the work is completed: and it is applicable to other rites, beſides a ſacrifice performed according to the forms of MADHYANDINÁ and the like; for there it is directed that the fee ſhall be paid in the midſt of the ſolemnity: this is intimated by the expreſſion "*on whatever occaſion.*" The ſpecifick fee is not mentioned, but a reward ſhall be given in the form of a *púrna pátra* or the like.

XXXIX.

The Gríhya-ſangraha and *Pariśiſhta pracáſa* define a *púrna pátra*:—Eight handfuls are a *cunchi*: eight *cunchis*, a *puſhcala*; and four *puſhcalas*, a *púrna pátra*.

Lawyers ſay, that a *cunchi* is a quantity of rice ſufficient for one meal. If the party be unable to give the *púrna pátra* mentioned, then the *Ch'handóga-pariśiſhta* directs:

XL.

Let him make a *púrna pátra* of ſo much rice as will ſatisfy one great eater, and no leſs: this is a ſettled rule.

"If another perform, &c." (XXXVIII 2): it muſt be underſtood, from parity of reaſoning, that, if there be others, a reader and a by-ſtander, even they ſhall partake of the fee. If the principal himſelf perform the offices both of *Brahmá* and *Hótá*, let him give the fee to another perſon, to the reader and by-ſtander. Or, if he perform both his own office and that of a ſtranger,

ſtranger, let him give the fee to another perſon, that is, to any *Bráhmana;* otherwiſe the rites would be imperfect.

XLI.

SANC'HA and LIC'HITA:—If an officiating prieſt die, *or abſent himſelf,* let the ſacrificer afterwards engage another prieſt: the ſacrificial fee belongs to the prieſt firſt engaged, *or to his heir;* but he who is afterwards called ſhall receive ſomething. Should he abſent himſelf, giving notice of the *probable* time, and of the cauſe *of his abſence,* let the ſacrificer wait that time, and not perform the ceremony with another prieſt: but if he be hurried, he may cauſe that ſacrifice to be finiſhed by another; and the abſent prieſt, who is forſaken, ſhall receive ſome trifle *as a token of reſpect.* Should the officiating prieſt wilfully abſent himſelf, though forbidden, while the ceremony is incomplete, he ſhall be fined a hundred *panas:* or if he be a grievous offender, the family-prieſt *ſhall be amerced.* To prieſts engaged to officiate at ſolemn rites, but afterwards found to be afflicted by diſeaſe, degraded, inſane, of ill fame, or diſabled by age, favour ſhould be ſhown; *but other prieſts ſhould be appointed in their ſtead.* If the officiating prieſt wilfully deſert the ſacrificer, who is not a degraded perſon, *nor otherwiſe diſqualified,* he ſhall incur an amercement of two hundred *panas:* and ſo ſhall the ſacrificer, who forſakes the officiating prieſt, though he be not degraded, *nor otherwiſe incapable of acting.* But a man ſhould readily forſake an ignorant *or fooliſh* prieſt, though he be

not degraded; and a prieſt may abandon a ſacrificer who gives not *due rewards*, even though *otherwiſe* void of offence.

It has been already ſaid, that if the officiating prieſt be diſabled, his work ſhould be finiſhed by another perſon: the Sage now declares the rule, when a prieſt engaged to officiate does not attend, "let the ſacrificer afterwards engage another prieſt." If he be accidentally delayed in coming from his houſe, or if the ſacrificer ſhould hear that the prieſt has gone to another town without giving notice that a delay in his attendance may be expected, then another prieſt may be appointed. But CHANDÉSWARA explains the text, "If one of ſeveral prieſts appointed to officiate at ſolemn rites ſhould die or be diſabled, and the ſacrificer engage another prieſt." This *(abſence)* muſt alſo be underſtood from the terms of the gloſs, "die, or be diſabled." MISRA ſays, "if one of the officiating prieſts die, let the ſacrificer engage another prieſt:" and the meaning is, "if the prieſt firſt appointed go to another town, or die, the fee belongs to him, though another prieſt be engaged; and the other prieſt, conſidered as a ſtranger, ſhall receive ſome recompenſe in proportion to the work." This appears from the literal ſenſe of the Sage's text, and from the explanation given by MISRA and others. What recompenſe ſhall he receive? a ſhare of the ſacrificial fee? or another gift from the ſacrificer? If he receive a ſhare of the ſacrificial fee *in proportion to the work*, then ſhould the prieſt, after being engaged for the rites, abſent himſelf on the firſt day, he would have no ſhare of the ſacrificial fee. Under the expoſition of CHANDÉSWARA, ("the fee payable to the perſon firſt called ſhall be proportioned to the work, and be received by his heirs in the caſe of his death,") it is ſaid that a fee proportioned to the work ſhall be received by the perſon firſt called, or by his heir. Why is it declared that "the ſacrificial fee belongs to the prieſt firſt engaged?" Should it not rather be declared, as in the text of NÁREDA (XXVIII), that "he ſhall receive a ſhare of the gratuity?" This text has the ſame import with the words of NÁREDA: the former text of SANC'HA and LIC'HITA (XXX), directing the appointment of another prieſt, intimates a partition of the ſacrificial fee: by mentioning, in the preſent text, that

the

the gratuity belongs to the prieſt firſt appointed, it is denoted, that if the firſt prieſt return after another prieſt has been engaged, the firſt prieſt ſhall perform the work: on this conſideration, it is directed that the other prieſt ſhall receive ſomething. If the former text (XXX) relate to the death of the prieſt, how can this part of the preſent text (XLI) apply to the caſe of abſence; and why has CHANDÉSWARA explained it "if he die, &c.?" "Die," in the former text (XXX), may be taken in an indefinite ſenſe. Then, the text of NÁREDA coinciding with that of SANC'HA and LIC'HITA, the word explained "diſabled" would ſignify dead? Some rule is neceſſary for the caſe of a prieſt unable to act: the text of NÁREDA cannot apply to a caſe of death; for he ſays, "receive from him (from the firſt prieſt) the ſtipulated ſhare."

This firſt rule being applicable to the caſe of abſence without notice, the Sage delivers a ſecond rule: "If he abſent himſelf, after notifying the time, (a month, a fortnight, or the like,) or the cauſe of his abſence, let the ſacrificer wait his return, and not perform the ceremony with another prieſt:" ſo the *Retnácara*. A prieſt engaged for a ſacrifice which may be performed on many *different* days, or for the reading of *Puránas* or the like, being buſied on work which allows not leiſure, fixes a day, two days, a fortnight, or a month; and, promiſing to attend after finiſhing the work, departs on that buſineſs: the ſacrificer, having conſented *to wait*, muſt not engage another prieſt, but muſt defer his buſineſs for the time *limited*. But MISRA thus expounds the text: "if any officiating prieſt be abſent on account of buſineſs, let the ſacrificer allow ſufficient time *for his return*." According to his gloſs and reading, the ſacrificer, eſtimating the time and occaſion *of his abſence*, ſhould ſo long await *his return*. The meaning is, that, eſtimating the time required for the completion of that buſineſs which occaſions his abſence, the ſacrificer ſhould wait a little longer. On this opinion, abſence, with the conſent of the ſacrificer, is not implied; and this part of the text has the ſame ſenſe with the preceding part: but there, the fee is noticed; and here, it is directed that another prieſt ſhall not be appointed. The reſult is, that, in caſe of conſent, it is neceſſary to wait a ſufficient time, as is univerſally acknowledged; and even without having previouſly conſented, the ſacrificer ſhould,

if poſſible, wait the prieſt's return. According to MISRA, this is ordained by the law; and according to the *Retnácara*, it is *only* grounded on the reaſon of the law: but it is proper.

If a prieſt, after being engaged for a ſacrifice, which allows not leiſure, but ſhould be performed on the day of full or new moon, or the like, abſent himſelf on ſome urgent occaſion, with, or without the aſſent of the ſacrificer; what is to be done? for the ſacrificer cannot wait, ſince the rites are only proper on a certain lunar day? To this queſtion it is anſwered, "if he be hurried, &c" (XLI). "And the abſent prieſt ſhall receive ſome trifle;" he ſhall receive ſomething as a token of reſpect; ſince, not having performed any part of the work, he is not entitled to a ſhare of the ſacrificial fee. Or ſomething ſhall be given to preſerve due reſpect, merely on account of his engagement, when the prieſt, prevented by buſineſs from attending *at the proper time*, afterwards does attend: this alſo ſhould be underſtood from parity of reaſoning. CHANDÉSWARA thus explains the text: "let a man who underſtands the order of proceeding, cauſe the ſacrifice to be finiſhed by another prieſt; and let the prieſt firſt engaged, who went to a diſtant place, and has been *therefore* forſaken, receive ſomething from the ſacrificer as a gratification:" that is, if the ſacrificer could not wait his return. But MISRA ſays, if the prieſt be ſuppoſed to have died, &c. let the ſacrificer cauſe the ceremony to be finiſhed by another prieſt, and the ſacrificial fee belongs to him; but if the prieſt happen to return, let the ſacrificer give him ſome trifle. If the prieſt went with the aſſent of the ſacrificer for five days, and afterwards another prieſt, knowing that rites are to be celebrated at the expiration of ten days, happen to attend, the ſacrificer may cauſe the work to be finiſhed by that other prieſt: but, after his own aſſent, he ſhould not, without a ſufficient cauſe, engage another prieſt, at the inſtigation of *other* people, or from a motive of anger or the like.

A third rule is mentioned: "if the prieſt wilfully abſent himſelf, though forbidden by the ſacrificer, he ſhall be fined a hundred *panas*:" ſo MISRA and CHANDÉSWARA. From the inſertion of two words, "wilfully" and "forbidden," it is inferred, that, if he be abſent on account of urgent buſineſs, even though forbidden, he ſhall not be amerced: nor ſhall he be fined if he abſent himſelf, even without buſineſs, but not forbidden *by the ſacrificer*.

ſacrificer. However, "not forbidden" may be underſtood as included in forbidden: thus, if he abſent himſelf without giving notice to the ſacrificer, and without buſineſs requiring his abſence, even then he may be amerced. This is conſiſtent with the reaſon of the law; for, as not forbidding is aſſenting, ſo it may be ſaid that not aſſenting is forbidding. It follows from the context, that another prieſt may be engaged; and the ſacrificial fee ſhall be received by him who performs the work, and it is not proper that a gratification ſhould be given. If the officiating prieſt, though forbidden, abſent himſelf after performing ſome work, ſhall he, or ſhall he not, receive the fee for that work? It is anſwered, the payment of a fine is declared, not the forfeiture of the wages of his labour: therefore he ſhall receive the fee for the work performed. If he only abſent himſelf after his engagement, does he not receive a gratification from the ſacrificer? There is no need of a gratification, ſince he is faulty. The appointment of prieſts is an eſſential part of the rites; but it is the act of the ſacrificer: the acceptance of the appointment is no part of the rites. Let it not be objected, that the appointment may perhaps be unaccepted; and, if it be not accepted, the rites produce no benefit to the ſacrificer; and thence it follows, that the acceptance of the appointment is a part of the rites. If they be completed, it is uſeleſs to admit it as a primary or ſecondary part: another prieſt is appointed; and his acceptance muſt be *ſuppoſed*. Abſence does not here intend going to another province or another town only; but alſo going to his own houſe, and neglecting the performance of the rites: and if a prieſt engaged in one place, and, having undertaken the buſineſs, undertake other work in another place, leaving that buſineſs unfiniſhed, it muſt be underſtood to be an offence, according to the circumſtances of the caſe.

"Or if he be a grievous offender, &c." if the officiating prieſt be a grievous offender, &c. "Or" denotes another caſe. By this part of the text is denoted a man who was already a grievous offender; in the former part is intended an offender on that particular occaſion. CHANDÉSWARA ſays, that one who was already a grievous offender is here intended: and this ſhould be underſtood as admitted by MISRA. Thus, if that officiating prieſt, having received an appointment for ſolemn rites, wilfully

abſent himſelf, the ſacrificer's family-prieſt, who ſelected perſons to officiate, ſhall be amerced. It is the regular buſineſs of the family-prieſt to ſelect officiating prieſts: or, in his default, a learned [illegible]nd ſelects them. This meaning is deduced from the word family uſed in this place, and from ſuch practice ſeen in hundreds of inſtances. But VÁCHESPATI ſays, "the ſpiritual preceptor, who inveſted him with the mark of his claſs, ſhall be amerced:" and the author of the *Retnácara* explains the word family in another ſenſe; "the prieſt, whoſe buſineſs it is to examine the families of the officiating prieſts, ſhall be amerced." No *eſſential* difference reſults from this expoſition; the only difference is, that it has been noticed in the *Retnácara*, that the officiating prieſt ſhould be ſelected by the family-prieſt.

Others thus interpret the text; "the family-prieſt, officiating at rites, ſhall be fined a hundred *panas*, if he offend." Conſequently the ſenſe is, that, if the family-prieſt, though forbidden by the ſacrificer, wilfully abſent himſelf while the ſacrifice is unfiniſhed, he ſhall be fined a hundred *panas*. This was *alſo* directed by the preceding part of the text, but is repeated to ſhow a fine if he abſent himſelf, even though he have not been engaged *for a particular ceremony*. This conſtruction will be noticed in explaining a text which will be quoted from NÁREDA (XLIII): but the former conſtruction is proper, becauſe it is delivered by authors, and is conſiſtent with the reaſon of the law: therefore, ſhould he appoint a grievous offender, he partakes of the offence. It ſhould not be objected, that, if the offence were not previouſly known to the family-prieſt, how can there be a fault on his part? He is faulty, becauſe he did not make particular inquiries: and if prieſts learned in law be ſelected by the ſacrificer without knowing their defects, even then the family prieſt ſhould make inquiries concerning faults, which may obſtruct the rites; but if the ſacrificer exclude him from that office, he is not in fault.

The word *(upádhyáya)* is explained by MISRA, the appointed ſpiritual preceptor; AMERA explains it 'a teacher;' he from whom a diſciple reſorting to him *(upétya)* learns *(adhité)* a ſcience, is a preceptor *(upádhyáya)*; we apply it to any family-prieſt *(purôhita)*. The grounds of this explanation are the mention of the word family: no perſon is teacher to a whole race or family;

nor

nor is it ordained, or cuſtomary, that the teacher ſhould ſelect the officiating prieſts: but the word *upādhyáya*, in hundreds of inſtances, ſignifies *purōhita*.

"Afflicted by a diſeaſe," which obſtructs the rites, or prevents their effect. "Of ill fame;" abandoned on account of ſome offence charged againſt him, and the like. "Old;" and therefore unable to act. So CHANDÉSWARA. Therefore, if a prieſt be engaged, without any knowledge of his malady or other diſability, and it be afterwards diſcovered, let the ſacrificer "favour him," and, with his aſſent, appoint another prieſt. The ſenſe is the ſame on the reading of CHANDÉSWARA; "favour ſhould be ſhown."

The text declares an offence in wilfully deſerting a ſacrificer; but there is no offence in quitting him for urgent buſineſs: and if the ſacrificer forſake a prieſt not diſeaſed, nor otherwiſe diſabled, nor abſent, he ſhall be fined two hundred *panas*. "Degraded," &c. comprehends generally diſeaſed, or otherwiſe diſabled. It is proper to forſake perſons who maliciouſly ſeek to injure the ſolemnity; or who, always finding fault, endeavour to ſpread ill reports; and other perſons of ſimilar deſcriptions.

"Ignorant;" much averſe from the ſtudy of the *Vēdas*, and unacquainted with the law concerning the rites at which he is to officiate, and with the rules concerning his part of thoſe rites, and the like. If any covetous *Brāhmana* officiate at ſacrifices for men of low and mixed claſſes, for whom *Brāhmanas* do not uſually officiate, the ſacrificer, having admitted him, ſhall not *afterwards* reject him, however ignorant he may be. Or if any learned prieſt, tainted with a ſin committed in a former exiſtence, conſent to officiate at a ſacrifice for ſuch a perſon, he ſhould be forſaken *by others*, under the authority of the text, as a fooliſh man; but ſince his fooliſh tranſgreſſion of duty was on that man's account, he ſhall not be forſaken by him: but if the fooliſh man had *already* violated his duty on another occaſion, there is no offence in forſaking him. This and other points may be inferred from reaſoning.

A prieſt may abandon a man who gives not "due rewards" at the time of a ſolemnity undertaken in the previous expectation of reward. In the former part of the text it is ſaid, that an ignorant prieſt may be forſaken: it muſt be underſtood, that a more

learned prieſt attends; a man ſhould not abandon an ignorant or fooliſh prieſt, and engage one more ignorant or fooliſh. In fact all this ſuppoſes knavery *or wickedneſs*: it is not proper to abandon an ignorant prieſt, without any miſconduct on his part, and without the attendance of a learned prieſt: knavery muſt be underſtood as the ground of puniſhment.

The amercement of two hundred *panas* directed for the ſacrificer who forſakes the officiating prieſt, and for the officiating prieſt who forſakes the ſacrificer, is inconſiſtent with a text quoted from MENU in the *Vivâda Retnâcara* and *Vivâda Chintámeńi*.

XLII.

MENU:—The ſacrificer who forſakes the officiating prieſt, and the officiating prieſt who abandons the ſacrificer, each being able to do his work, and guilty of no grievous offence, muſt each be fined a hundred *panas*.

MISRA and CHANDÉSWARA reconcile the text, by ſaying, that "there is no inconſiſtency, *ſince the fines are regulated* according to the voluntary or compulſory *deſertion* by a rich or a poor man." Conſequently, a rich man, if the act be voluntary, muſt be fined two hundred *panas*; but a poor man, even though the act be ſpontaneous, ſhall be fined one hundred *panas* only, becauſe he is unable *to pay a greater fine*. By "poor" is meant 'unable to pay two hundred *panas*.' If he cannot pay a hundred *panas*, what is the conſequence? He may be acquitted by the ſurrender of all his property. Why has MENU mentioned a fine of a hundred *panas*? Conſtructively, a greater fin being expiable by the ſurrender of the whole of a man's property, it is unſuitable to ſay that a ſmaller offence is not expiated. Here no favour is ſhown to the ſacerdotal claſs; for it is a *Brahmana* that deſerts the ſacrificer; and it muſt be totally from the very relation implied in the deſertion of a ſacrificer.

Law, *though not ſpecified in the text*, are underſtood, from the neceſſity of ſatisfying the queſtion, *of what ſhall the fine conſiſt?*

Where

Where the number is mentioned inſtead of the ſpecies, *panas* are commonly underſtood; for many inſtances of this occur: and that deſignation, being mentioned in the texts of other Sages, is deduced from the coincidence of the rules. In this inſtance, the fine directed by SANC'HA and LIC'HITA is explained two hundred *panas*; and the inconſiſtency of this text is removed by ſaying, that the two hundred *panas* above mentioned muſt be underſtood of wilful deſertion by a wealthy man: but SANC'HA and LIC'HITA *alſo* direct, that an officiating prieſt, deſerting a ſacrificer, ſhall be fined two hundred *panas*. They direct, that an officiating prieſt abſenting himſelf, though forbidden by the ſacrificer, but without *abſolutely* forſaking him, ſhall be fined a hundred *panas*. But it is conſiſtent with the reaſon of the law, that the amercement ſhould be fifty *panas* only, if he be poor, and his abſence be involuntary. This, however, is not ſpecified by any Sage, nor clearly expreſſed by any Author.

XLIII.

NA'REDA:—Officiating prieſts are of three ſorts; *the firſt, an hereditary prieſt*, honoured by former generations *with the employment of officiating prieſt; the ſecond*, appointed by the party himſelf; *the third*, he who voluntarily officiates on account of previous friendſhip.

2. The officiating prieſt who abandons a ſacrificer, though he be not a grievous offender, nor otherwiſe faulty, and the ſacrificer who forſakes an officiating prieſt guilty of no grievous offence, ſhall each be fined.

3 This is the law for hereditary prieſts, and for thoſe who are engaged by the party himſelf: but there is no offence in forſaking a prieſt, who, *unbidden*, officiates of his own accord.

" Honoured

" Honoured by former men ;" honoured as officiating prieſt by former generations ; an hereditary prieſt.

The *Vivâda Retnácara.*

" The ſecond, appointed by the party himſelf ;" one who is appointed, on the occaſion of a ſacrifice or ſolemn rite, to perform that *particular* ceremony. " He who voluntarily officiates, &c." YAJNYADATTA, influenced by friendſhip or the like, and for the benefit of DÉVADATTA, pays adoration to his houſehold gods ; or, at a time when he is impure, performs a ſacrifice which ſhould be performed by him ; or effects the ſacrament of the ſon of an abſent friend, even without his aſſent, to remove the evil which might ariſe from its not being effected ; it is to be underſtood of this and other caſes. " *Nor otherwiſe faulty ;*" this may apply to both : by fault are intended blows, enmity, diſhonour, and other faults already mentioned.

Who is an hereditary prieſt ? It ſhould not be ſaid, he whom the grandfather employed, and afterwards the father, and next the man himſelf. If the grandfather, being rich, employed ten millions of *Brâhmanas*, and the grandſon, being poor, cannot employ ſo many prieſts, he would incur a fine. Some hold, that " hereditary officiating prieſt " ſuppoſes a ſpecifick appointment in this form : " ſo long as my deſcendants and yours exiſt, ſhall you and your deſcendants ſacrifice for me and my poſterity." It is the cuſtom, that he whom the father called to all ſolemn rites, ſhould officiate alſo for the ſon ; and the agreement above mentioned is not ſuppoſed. In fact, the appointment is made by ſaying, " be my prieſt *(purôhita)* ;" which implies a diſtinction oppoſed to an appointment in this form, " now accompliſh my ſacrifice :" and here the word " *purôhita* " ſignifies a prieſt employed for a long ſpace of time. We do not determine whether the word " I " intend *the ſpeaker* himſelf only, or his race generally. If it intend his race generally, there is no diſpute ; becauſe, when the father has agreed that DÉVADATTA ſhall ſacrifice for his ſon, the ſon, forſaking him without a fault on his part, is liable to a fine : and this conſtruction is conſiſtent with the reaſon of the law. If the word " I " be reſtricted to the ſpeaker himſelf, how ſhould the ſon incur a fine by forſaking the prieſt ? Here proof muſt be brought from practice. A diſpute ariſing on the ſubject of deſertion by an officiating prieſt or by a ſacrificer,

ficer, the firſt ſays, " I have been prieſt *(purōhita) to the family* for three generations;" *he does* not *ſay* " an agreement was made by his grandfather for the performance of ſacrifice *by me and my heirs,* as long as his race ſhould exiſt."

Is not ſuch an agreement inferred from the performance of ſacrifice for three generations without interruption; and does he not, for that very reaſon, plead the performance of ſacrifice for three generations? No; ſuch an inference cannot hold, ſince it is not the preſent practice for any perſon to make an agreement in that form. On this ſubject it is ſaid the uſage is aſcertained, as implied by this text: thus, by ſaying " be my prieſt (or *purō-hita)*," he is fully appointed to be prieſt *of the family* for a long ſpace of time; and, whatever be implied, the prieſt ſo appointed by the father ſhall not be forſaken by the ſon, unleſs he be guilty of ſome offence. This, virtually, is the ſenſe *of the text.*

A prieſt appointed by a man himſelf is of two ſorts; appointed for a long ſpace of time, or appointed for a particular ceremony. The rule varies in reſpect of theſe: it is an offence, under any circumſtances, to forſake a prieſt appointed for a long ſpace of time, unleſs he commit ſome fault; and it is an offence to forſake a prieſt appointed for a particular ſacrifice, in the midſt of that ſacrifice.

In the gloſs on the text of SANC'HA and LIC'HĪTA, prefaced by the words " others thus interpret the text *," it is intimated, that if the family-prieſt, or a prieſt appointed to that office by the ſacrificer himſelf, ſhould abſent himſelf, knowing that a ſacrifice is to be performed, though not engaged for it in the form directed by the law, he ſhall be fined; provided no perſon attends as his repreſentative. From parity of reaſoning, the ſacrificer ſhould be fined, if he refuſe to employ his family-prieſt above deſcribed.

If ſacrifice have been uninterruptedly performed by father and ſon, as family-prieſt, without an expreſs appointment in this form, " be my family-prieſt," what is the conſequence? Even in this caſe, the law concerning hereditary prieſts is appoſite, ſince ſuch an appointment of father and ſon is admitted by implication.

If hereditary prieſthood be liberally admitted in favour of a prieſt

* See page 54.

prieſt engaged by the father for a long ſpace of time, may it not be admitted in favour of the ſon of a prieſt ſo engaged by the father? Thus, a diſpute ariſing on the ſubject of deſertion between the grandſons of the ſacrificer and of the officiating prieſt, the grandſon of the prieſt may offer this plea, "his grandfather employed my grandfather in ſacrifices, and the office has been uninterruptedly held by us from that period." It may be ſo: for he will better gain his cauſe by *proof of the performance of* ſacrifice for ſeveral generations, than by the ſame *proof* for one generation only.

Such being the caſe, where the officiating prieſt has three ſons, and the ſacrificers, *or employers*, are three, a partition may take place; for, on this admiſſion, the ſacrificers, *or employers*, are ſimilar to property. But if any one ſacrificer refuſe one of the prieſt's ſons, what is the conſequence? It ſhould not be argued, that partition ariſing from the right of the prieſt's deſcendants to *officiate for* the ſacrificers, *or employers*, under the authority of law and cuſtom, the ſacrificers ſhall be fined if they refuſe their aſſent to the partition: and in this *laſt* caſe all ſhall be fined, ſince all are equally in fault. No one has mentioned a fine for parties refuſing their aſſent to a partition. Nor ſhould it be argued, that, ſince forſaking the ſon of a family-prieſt amounts to the forſaking of an hereditary family-prieſt, the abandoning of the family-prieſt is a cauſe of amercement. No Sage or Author has ſaid ſo. To the queſtion thus propoſed, the anſwer is, they muſt be underſtood to be indiviſible, under the text of VYÁSA (Book V, v. CCCLXIV); and the rational diſtribution, mentioned by VRĬHASPATI (Book V, v. CCCLXVI 6), ſuppoſes the conſent of the ſacrificers. Thus, if the ſacrificers ſay nothing, they ſhall not be forcibly taken by one perſon. In fact, a diſtribution of ſacrificers, *or employers*, though not mentioned by authors, may be adjuſted by the king, on his own judgment: but a diſtribution by lots ſhould be preferred.

In certain towns or other places, and for particular rites, the office of prieſt is hereditary in ſome families; and partition is there cuſtomary, and ſhould be admitted in ſuch inſtances. It is the hereditary office of ſome perſons to deliver written inſtructions on the forms of penance and the like; in theſe inſtances alſo partition ſhould be allowed.

Agrahárica

*Agrahárica** priests and others, paying revenue to the king, hereditarily receive *tila* and the like; their right should be admitted on the same construction of law with *the right of* family-priests; or on the king's pleasure. As the king has property in the village, entitling him to receive revenue, so the *Agrahárica* and others have property entitling them to receive *tila* and the like. May not the king, having property, dispose of it at his pleasure; but can the *Agrahárica* do so? The king has not power to destroy the village *by oppression;* and his gifts and alienations are not incontestible. It is the same in respect of the *Agrahárica*. The king may *indeed* take the property of the subject, because he is lord of the land: however, as the king, though he have property in the soil, cannot take its *whole* produce, but has a title in a waif, though it belong to a subject; so he may take the property of subjects, though the *Agrahárica* and others have *also* a title in it.

If *tila* and the like be taken by the *Agrahárica* and others in right of a property in the village, the giver would have no benefit from the gift, any more than from the payment of the king's revenue. This is denied; property does not arise in the *tila* from the payment of the king's revenue, but a title to receive the *tila*. Property authorizing alienation at pleasure originates in actual receipt, founded on the title to receive from such peasants, and in actual delivery by the donors. Consequently, there is no difficulty.

It is doubted whether wives and others have a title to this succession, although the partition, founded on the admission of a right vesting in *Agraháricas* and other officiating priests, ought to be similar to the partition of inheritance *in general*. As the wife's title to succession, on failure of heirs in the male line as far as the great grandson, will be declared under the head of Inheritance, what should reverse her title *in this instance?* It should not be argued, that the wife can have no right in the village, because, as a woman, she is disqualified for the performance of holy rites, and because the wives of *Agraháricas* and others are totally incapable of receiving *tila* delivered as a gift to priests. The *tila* may be received, and the rights be performed, through the intervention

* Priests who attend at funerals. In some districts they are called *Mahábrahmen;* in others, *Mahápátra, Agradán, Prétiya, Cant'aka, &c.*

intervention of a ſubſtitute. Let it not be argued, that, were it ſo, a property in the ſacrificial fee and *regular* dues would veſt in the ſubſtitute. The wife may have the benefit of property acquired by the ſubſtitute, as a ſacrificer has the benefit of rites performed by an officiating prieſt. However, there is this difference: the ſacrificer acquires merit from rites performed by an officiating prieſt, and none is ever acquired by the intermediate performer of the rites; but if the duty of the officiating prieſt be performed by a ſubſtitute, property in the ſacrificial fee is at firſt veſted in the ſubſtitute, and, through him, in the widow entitled thereto. It is alleged, that there is no authority for this conſtruction. It cannot, *it is ſaid*, be argued, that the authority which forbids deſertion proves a property in the village, ſince otherwiſe it muſt be irrelevant; hence property in the ſacrificial fees and the like veſts in the wife as owner, and afterwards is acknowledged to veſt in the ſubſtituted prieſt, becauſe otherwiſe the ſacrificer's rites could not be complete: the law, *it is ſaid*, does not declare it an offence to forſake the wife *of an officiating prieſt*; for ſhe is an ignorant perſon. That is denied; becauſe, the deſcendants of an officiating prieſt having the ſame right *to the office* which they have to inheritance *in general*, (on the admiſſion of property in that office,) the forſaking of an ignorant perſon is limited to the actual performance of the rites. It is no-where ſeen, that, a wife and a daughter's ſon being left by an officiating prieſt, the wife ſhall be entitled to the remainder of the eſtate, and the daughter's ſon be entitled to the *perquiſites of the* office.

If this argument be propoſed, the anſwer is, the ſame text which declared that hereditary prieſts ſhould not be forſaken, excepts ignorant perſons: and that authority avails not, in this caſe, to confer property on one who is not a learned prieſt. As for what is alleged, that the wife is entitled to the wealth, and that there is no ſettled uſage entitling the daughter's ſon to take the office; the parity between the wealth and the office may ariſe from favour ſhown by the daughter's ſon and by the ſacrificers, or from miſtake: uſage alone is no authority, unleſs it be confirmed by conſtruction of *expreſs* ordinances.

On this point it is argued, that, as the rites cannot be performed by an ignorant or diſabled perſon, the law directs that he ſhall be forſaken, intending that the rites ſhould be performed by means

means of a ſubſtitute; but the ignorant perſon has property in the ſacrificial fees and the like, as the owner *of a ſlave has property* in the wealth acquired by the ſlave: and this conſtruction ſhould be ſettled on the ſtrength of the admiſſion of a property *veſting in the heir*. The text which ordains that "a perſon unable to act ſhall appoint another to act for him," is the foundation *of this conſtruction:* but the property of an outcaſt, or other perſon diſqualified for ſolemn rites, is abſolutely loſt, in the ſame manner with his right to the paternal gold, ſilver, and the like. This will be explained in the fifth book, On Inheritance. Wives and others, diſqualified by ſex for the performance of holy rites, cannot appoint a ſubſtitute; as a defiled perſon cannot perform a ſolemn act ordained by the *Vĕdas:* therefore wives have no property in the office of prieſt.

If the daughter of an officiating prieſt have a ſon, has that ſon a property in the office? If the daughter's ſon have ſuch a right, then ſhould a daughter likely to bear a ſon, and a ſon of the maternal great grandfather's daughter, be left, he would be entitled to the office: but that is not ſupported by uſage, nor by common ſenſe; and there would be no certainty in regard to what ſhould follow, if a daughter's ſon be afterwards born. If it be ſaid, the daughter's ſon has not ſuch a property; then the reaſon of the law is tranſgreſſed: for there is nothing to prevent the property of the daughter's ſon in his maternal grandfather's wealth, if it be not reſiſted by a right veſted in ſome other heir, *the male deſcendant, the wife, or* the daughter of the *laſt* poſſeſſor; and this office is abſolutely ſimilar to wealth.

The text which forbids the diſmiſſion of an hereditary prieſt, does not imply that his heirs ſhall not be diſmiſſed, but implies that a perſon appointed by the grandfather or other anceſtor ſhall not be forſaken: thus no difficulty affects the terms *of the text.* That is denied; for the practice is not ſuch.

Therefore the difficulty is thus reconciled; women are entitled to that only for which they are qualified. In regard to the aſſertion, that women, being diſqualified, cannot appoint a ſubſtitute, this muſt be underſtood: being diſqualified for ſolemn acts ordained by the *Vĕdas*, they cannot appoint a ſubſtitute for ſuch acts; but, qualified for worldly acts, nothing prevents their appointment of a ſubſtitute for temporal *affairs:* and the right

ſhould devolve on the next in ſucceſſion, under the text *quoted in another place* (Book V, v. 477), and becauſe women are dependent on men. Grain and ſimilar property may be conſumed by a woman entitled *to the ſucceſſion;* but gold, ſilver, and the like, ſhould be preſerved: if ſhe cannot *guard it*, let it be intruſted to her huſband's heir, as will be mentioned under the title of Inheritance. Here, ſince a woman cannot preſerve the office, it ſhould be executed by her huſband's daughter's ſon, or other heir: but the produce ſhould be enjoyed by the woman. However, ſhould the daughter's ſon be at variance with his maternal grandmother, it may be executed by another perſon: he is not entitled to his maternal grandfather's property, if that grandfather leave a wife: and ſhould the maternal grandmother litigate, it muſt be amicably adjuſted.

The uſage in regard to *Agrahâricas* and others has been briefly diſcuſſed. No more expreſs ordinance is found to determine, conſiſtently with uſage, the ſuits which ariſe on theſe ſubjects. If ordinances alone be received, there is no authority for eſtabliſhing the right of their heirs: and many excellent perſons do not admit the rules of inheritance in theſe caſes.

"There is no offence in forſaking an *unbidden* prieſt who officiates of his own accord (XLIII. 3)." The word is interpreted *officiating* prieſt in the *Vivâda Retnâcara* and *Vivâda Chintâmani*. If any *Bráhmana*, of his own accord, attempt the performance of holy rites for any perſon, and that perſon, when informed of it, forbid him, the ſacrificer ſhall not be amerced *for ſubſequent deſertion*. But it muſt be conſidered, that, if the ſacrificer, though informed of it, have not *at firſt* forbidden him, but afterwards, when ſome part of the rites has been performed, do forbid him, he ſhall be amerced; for, not to forbid, is to aſſent: under this rule, *his ſilence* amounting to full aſſent, the prieſt is abſolutely appointed by himſelf, and it would be improper to diſmiſs him from that ceremony. Though it be not mentioned by authors, this is conſiſtent with common ſenſe.

LXIV.

VRIHASPATI: — They are declared to be of three forts;

ſorts; coming of their own accord, hereditarily employed, and appointed by *the ſacrificer* himſelf *for that turn:* even ſo ſhould the buſineſs be performed by them.

" They ;" meaning officiating prieſts. " Coming ;" voluntarily *officiating.* " Hereditarily employed ;" appointed by former perſons. " Even ſo ſhould the buſineſs be performed ;" that is, the rites ſhould be performed as above mentioned. Such is the ſenſe *of the text.* But ſome conſider this text as intending concerns among partners in general: thus, the ſenſe would be, partners are of three ſorts; accidentally entering into partnerſhip, hereditarily engaged, (as a ſon after the death of a father, who was engaged in partnerſhip,) and engaged by *the party* himſelf (that is, called in by him at the commencement of the undertaking). " Even ſo," &c. that is, the buſineſs ſhould be adjuſted in proportion to the ſhares, whether equal, leſs, or greater.

Here it ſhould be conſidered, that, if five teachers be engaged to read holy books, and one expound the verſes, and all the reſt be reciting readers, gratuities are ſeparately paid to each of them; and ſomething is given by ſtrangers who hear the recital, to the expounder of verſes and the reſt, either for the benefit of hearing, or from the ſatisfaction which their ſkill in recital affords: and, according to ancient and excellent uſage, ſtrangers as well as the employer give ſomething reſpectively for particular ſtories; ſuch as the ſtory of LACSHMANA'S eating *after his long faſt*, in the recital of the *Rámáyana;* and the ſtory of the dwarf's begging alms, in the *Srí Bhágavata;* and the marriage of DRAUPADÌ, in the *Mahábhárata.* In ſuch caſes, what is received both by the readers and the expounder ſhould be *diſtributed* in ſhares; but what is given on account of peculiar excellence, or ſkill in recital, belongs to him to whom it is given. The ſhares ſhould be diſtributed according to the number of readers; and the expounder ſhall have a half, a quarter, or ſome other ſhare. At preſent ſuch a cuſtom ſubſiſts in ſome countries: though not declared by the law, it ſhould be admitted on the ſtrength of cuſtom.

In this caſe, ſhould the expounder obtain any thing by the error of introducing a more excellent *ſtory* on a leſs excellent occaſion, (as LACSHMANA eating *after his long faſt*, in *the recital of* the ſtory of the *Mahábhárata,)* what is the rule? The anſwer is, if the readers aſſiſted in the miſtake, the diſtribution ſhould be made as in the preceding caſes; but if they did not aſſiſt in it, the whole belongs to the expounder; or if ſome of the readers did aſſiſt, they are entitled to ſhares of the reward, and the ſhares ſhould be diſtributed according to the number of perſons concerned.

From the mention of former perſons, *or generations, it muſt be underſtood, that* the family-prieſt of the paternal grandfather, being ſuperior *to others*, not the prieſt of the maternal grandfather, ſhould never be forſaken; but ſhould there be no paternal family-prieſt, or no paternal wealth, and the man ſucceed to *his* maternal grandfather, then it is proper that he ſhould employ his family-prieſt. This, however, is merely an induction of common ſenſe, not the import of the ordinance.

The known cuſtoms at holy places, ſuch as *Gayá* and the like, and in other countries, ſhould be maintained in judicial procedure.

SECT. III.—*On Partnership in Loans, in Husbandry, in Arts, and in Plunder.*

XLV.

VRÍHASPATI:—The profits of thoſe who *jointly* lend gold, grain, liquids, or the like, ſhall be proportioned to their reſpective ſhares *of the outlay*, whether equal, or more, or leſs: thus is the law ſettled.

2. Whatever property a man lends, with the aſſent of many, or whatever buſineſs he *ſo* cauſes to be performed,

performed, is conſidered as the act of all the partners.

Advance, or "lend," is explained in the *Retnâcara*, make a written contract with a view to gain. A joint loan on intereſt is intended: the profits ſhall be proportioned to the ſhares in the principal loan; and the ſame muſt be underſtood of loſs: this is the ſettled rule and practice. What is lent to any perſon, with the aſſent of all the partners, is lent by all: and a contract which one partner makes with the aſſent of all, or his acceptance of a written contract of debt from a debtor, is conſidered as the act of all. Conſequently, they all ſhare the gain or loſs on that loan; and the borrower, by that written contract, becomes debtor to all the partners: therefore, ſhould any one of them adopt compulſory means for the recovery of the debt, he ſhall not be puniſhed.

XLVI.

Among perſons bound jointly and ſeverally, whoever is found may be compelled to pay the debt*.

As a debt muſt, under this text, be paid by any one ſurvivor among ſeveral debtors jointly bound for the ſame debt; ſo any one ſurvivor among ſeveral creditors jointly advancing a loan, may, conſiſtently with the reaſon of the law, recover the whole debt: but the heir, or the king, not the partner, *ultimately* receives the property of the deceaſed; for the caſe is parallel to that of partnerſhip in trade. How then may one ſurvivor recover the whole property? If he recover not the whole, the heir of the deceaſed, or the king, might take the ſhare belonging to the deceaſed, out of the proportion which the ſurvivor recovered as his own ſhare: therefore, he ſhould endeavour to compel payment of the whole debt. But if the debtor declare, "this I pay thee for thy portion, the ſhares of the reſt ſhall be paid hereafter;" the portion of the debt received by the ſurvivor cannot be taken from him by any other perſon. It ſhould not be argued, that, the recovery of a debt due to joint lenders being requiſite,

* Book I, V. clxxiv.

quiſite, like the payment of a debt due from perſons jointly bound for it, he ſhall be amerced if he neglect to recover it; but it is neceſſary that the heirs of the deceaſed ſhould aſſiſt in the recovery of the debt. If the heirs aſſiſted in the recovery, the debtor could not ſay, "I now pay thy ſhare:" however, a penalty for not demanding the debt will be mentioned. It ſhould not be argued, that, if the heirs of the deceaſed reſide in another province, then, not being preſent, they cannot make the demand: the debt ſhould therefore be recovered by the ſurvivor; and if he accept his own ſhare alone, he ſhall be amerced. The caſe being parallel to that of partnerſhip in trade, it is neceſſary that the king ſhould aſſiſt in the recovery of the debt: and here the demand *of payment* is ſimilar to the cuſtody of ſtock, in the caſe of partnerſhip in trade. But if the king violate the law, is there any fault on the part of the heirs, that the loſs ſhould ultimately fall on them? No ordinance expreſsly requiring that it be recovered by the partner, it is a ſettled rule that the loſs muſt be borne by the heirs. But, in fact, according to MISRA's expoſition of the text of NÁREDA (XIX), the debt ſhould be recovered by the partner, as the ſtock ſhould be preſerved in the caſe of partnerſhip in trade. To neglect it, though able to recover it, is an offence; and the perſon who recovers the debt may receive a tenth part of it, as in a caſe of ſalvage.

When a loan on intereſt has been jointly advanced by five perſons, if one die, and his heir be preſent, the heir ſhould conclude the tranſaction: but if the ſucceſſor reſide in another province, then indeed the ſurviving partner ſhould give notice to the king through the means of his officers, and the king ſhould depute thither an officer appointed by himſelf; but if the king omit it, the partner in the loan ſhould conclude the tranſaction, and ſend notice to the heir, that he may attend: however, ſhould ſome cauſe prevent him from doing ſo, the partner may follow his own choice; no offence is thereby committed.

If the king conclude the tranſaction, he ſhall receive, in the order of the claſſes, a twentieth part from the property of a *Brāhmana*, a twelfth from that of a *Cſhatriya*, a ninth from that of a *Vaiſya*, and a ſixth from that of a *Sūdra*. The caſe muſt neceſſarily be held ſimilar to partnerſhip in trade. Thus, in anſwer to the queſtion, "who ſhall perform his duty if one

partner

partner die?" the rule is propounded, "on failure of heirs, the king;" for that is ſhown in the caſe of partnerſhip in trade. Is a tax to be paid to the king in conſideration of his executing the buſineſs? In anſwer to this queſtion the rule is ſet forth, "let the king receive a ſixth part, &c." (XXII 1). But if it be foreign to the king, the difficulty is reconciled from the text before cited; "or, if there be no heir, another partner who is willing and able to act; if there be no ſuch perſon, all the partners;" (XIX). However, ſhould the king forbid it, his commands muſt not be diſobeyed: the king forbids not any thing without a ſpecial cauſe.

XLVII.

VRĬHASPATI:—To a paternal or maternal kinſman, and to a friend, a loan may be made on a pledge only; to others, with a ſurety, or on a contract written or witneſſed.

This text belongs to the general title of Loan and Payment; for the reaſon of the law is equally appoſite *in all caſes of loan.*

If one of ſeveral partners in money-lending, being ſkilled in buſineſs, aſk, "ſhall I ſingly advance a loan to the propoſed borrower?" in that caſe, ſhould they aſſent, the loan advanced is lent by all the partners; as is declared by the preceding text (XLV 2). In what mode ſhould the loan be advanced? in what caſe? The legiſlator replies, "to a kinſman, &c.;" to any kinſman or friend of the partners, it ſhould be advanced on a pledge, and one of ſufficient value ſhould be taken (Book I, v. XI). The grounds of the law are theſe: if the kinſman do not repay the loan, but ſay, "I cannot now repay it;" compulſory means would be a breach of the regard due to him, and therefore the debt may be irrecoverable: but if a pledge be taken, the debt may be recovered, by the ſale of it at the expiration of the ſtipulated period, or at the end of eighty months or the like. From others it is not neceſſary that a pledge ſhould be taken; he therefore mentions two modes, according to the honeſty or diſhoneſty of the man, "to others, &c.:" in default of a ſurety, a loan

may be advanced to a diſhoneſt man, on a contract written or witneſſed.

XLVIII.

VRĬHASPATI :—At pleaſure, *or without a time limited for payment*, may gold or ſilver be lent; but liquids and grain, for a limited time; by the cuſtom of the country muſt the loan and the payment be regulated.

At pleaſure, with or without a time limited for payment, may gold or ſilver be lent; but, for liquids and grain, a limited time is neceſſary. The *Retnácara.*

The time muſt be regulated by the cuſtom of the country; and the payment muſt be regulated by the time agreed on. Under the text of HÁRÍTA, (Book I, V. xliv 2,) grain is doubled at the time of harveſt; but if no time have been limited, it is not more than trebled even after a hundred years: therefore grain ſhould be lent for a time limited to the next harveſt; and if it be not repaid at the ſtipulated time, it may bear wheel-intereſt. But intereſt is receivable on gold, ſilver, or the like, at the *monthly* rate of an eightieth part; therefore it daily accumulates at that rate. Afterwards, when the debt is doubled, it ſhould be recovered, or wheel-intereſt be ſtipulated.

XLIX *.

VRĬHASPATI :—After the time for payment has paſt, and when the intereſt ceaſes, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-intereſt.

On grain, though not paid at the time of harveſt, intereſt is not *conſidered as having* ceaſed, *becauſe it has become equal to the principal*,

* Book I, V, cclv.

principal, and therefore wheel-intereſt does not ariſe; but if a time were limited, wheel-intereſt may be required. Intereſt on liquids is ſimilar to that on grain; for, in the ſequel of the text, HÁRÍTA ordains, that "on clarified butter, ſalt, and raw ſugar, the intereſt may make the debt octuple:" and this follows from the expoſition of the *Retnácara*, on the text of HÁRÍTA. As grain is doubled at the time of harveſt, and, if the debtor cannot then repay it, is trebled, and not more; ſo is wool and cotton: but the fibres of graſs, clarified butter, ſalt and raw ſugar, in one year, became octuple. Therefore the expoſition of the *Retnácara* on this text ſhould be admitted. But reference is made to the cuſtom of the country: a loan ſhould not be made in ſuch a form, in a country where ſuch a cuſtom exiſts not; for this text is ſuperſeded by the text of NÁREDA (Book I, V. xlv 1). In ſome parts of the country, grain is received back with an increaſe of half the loan; in others, with an increaſe of a quarter: the loan and payment ſhould be ſo regulated.

It muſt be conſidered, that if a partner make a loan, in contradiction to this law, at his own pleaſure, without a pledge, and without a time limited for payment, he incurs blame, as appears from the tenor of the text: but if the other partners conſent to his making the loan at his pleaſure, there is no offence. Yet if a loan be made to a kinſman without a pledge, and he endeavour to diſcharge the debt, but happen to be drowned with his family, the lender is not frèe from blame. Such is the method ſuggeſted by common ſenſe.

But ſome hold, that this text does not declare an offence, but ſhows how a loan ſhould be made. That is wrong; for, were it ſo, the text ſhould have been inſerted under the title of Loan and Payment, immediately after the text there quoted (Book I, v. XI).

L.

VRÍHASPATI:—What has been lent by two or more jointly, muſt be jointly demanded by them: any one of ſuch lenders, who refuſes to join in the demand, ſhall forfeit his ſhare of the intereſt.

If any one of the joint lenders aſk, "ſhall a loan be made to this propoſed borrower?" In that caſe, if the others ſay, "we will jointly lend it," let all *ſubſequently* join in the demand of what has been ſo lent: but if one, though able, do not join in the demand, he ſhall forfeit his ſhare of the intereſt. But if the authority for making or refuſing loans be committed to one perſon, ſince it becomes his part to demand payment, and the act was done with a view to gain, it is not fit that another, who does not join in the demand, ſhould forfeit his ſhare of the intereſt.

LI.

VRĬHASPATI:—The law concerning loans has been already propounded, and *therefore* it is now conciſely delivered; hear the rules for huſbandmen and others, which are thus declared:

2. Prudent men conduct cultivation, in partnerſhip with thoſe who are equally provided with beaſts of burden, labourers, ſeed, land, and the implements of huſbandry.

3. *They ſhould* not *cultivate* common paſtures, places reſerved for cattle, nor the king's highway; let them purpoſely avoid barren land, and fields infeſted by vermin:

4. Sowing, at the proper ſeaſon, land well ſituated to receive and retain water, capable of irrigation, ſurrounded with fields, and well tilled, the cultivator will enjoy a produce.

5. Let no prudent huſbandman admit lean cattle, old, underſized, diſeaſed, vicious, blind of one eye, or lame.

6. He by whoſe deficiency in cattle and ſeed a loſs happens in the joint cultivation, ſhall indemnify all the cultivators:

7. This

7. This ancient rule has been declared for huſbandmen.

The law concerning loans has been already propounded, under the title of Loans and Payment; now, therefore, in declaring the law of partnerſhip in loans on intereſt, it is conciſely delivered: ſuch is the meaning of the text. Conſequently the various caſes of pledge and ſo forth, which have been delivered under the title of Loans and Payment, muſt be alſo underſtood under this head: therefore, ſhould a pledge be deſtroyed by the fault of all the creditors, it muſt be made good by all, and ſo forth. But, ſhould the pledge be deſtroyed by the fault of one of the creditors, it muſt be made good by him; and if it be deſtroyed by the act of GOD, it is the debtor's loſs. Theſe and other rules ſhould be conſidered as inductions from the reaſon of the law, or from expreſs ordinances. Again: if the debtor die, the property may be recovered from the ſurety; but, in this caſe, if any one of the creditors, from a motive of tenderneſs or of knavery, releaſe the ſurety, the fault is his. This and other rules ſhould be admitted.

"Hear the rules;" that is, what ſhould be done by huſbandmen and others. "Beaſts of burden;" oxen. "Labourers;" ſervants employed in the buſineſs of huſbandry. "Seed" fit for producing vegetation; in common acceptation, it ſignifies grain and the like. "Land;" fields on which grain is ſown. "Implements of huſbandry;" ploughs and the like. Agriculture ſhould be conducted in partnerſhip with perſons who are equally provided with theſe requiſites, that no diſpute may ſubſequently ariſe, becauſe leſs has been contributed by one partner *than by another.*

A portion of land reſerved for graſs is called "a common paſture:" ſo the *Retnácara.* Neither a common paſture, nor a place reſerved for cattle, nor the king's highway, *ſhould be cultivated:* as is inferred from what precedes. This is merely an incidental command reſpecting agriculture; it is not here ſuppoſed to become a ſubject of litigation. Or it may be thus explained: if a man unite with one who cultivates land reſerved for cattle, the king may ſay, "why doſt thou cultivate land reſerved for cattle?" If it be anſwered, "by his partner's directions;" he may be reproved in theſe words, "ſhall the town be deſtroyed by thee, becauſe

cauſe he directs it?" Therefore partnerſhip ſhould not be formed with a man who thus tranſgreſſes the law, and it is an offence in the partners who ſhare profit obtained by this breach of rule.

"Barren land" does not even ſupport the vegetation of graſs; how ſhould grain be raiſed there by the utmoſt labour? From the number of ſmall cells, "land infeſted by vermin" affords no produce, and the ploughs and other implements are much injured: therefore partners in huſbandry ſhould avoid ſuch land; or a man ſhould avoid it, leſt, on ſeeing the produce ſmall, he be reproached with not having well tilled his field. This is a direction to huſbandmen to avoid an unproductive ſoil.

Low land, capable of receiving much water, and whence the water is not early drained; ſuch clayey ſoil, ſurrounded with fields on all ſides (that the treſpaſſes of cattle may be prevented without trouble), and well tilled at the proper ſeaſon, in the month of *Mágha* and ſo forth: the terms are ſo explained in the *Retnácara*. This text is an incidental direction for agriculture. Or where five perſons jointly undertake cultivation with their own cattle and ſeed reſpectively, and agree to divide the produce after paying the king and others their due proportions of the produce, the text is applicable to ſuch perſons; therefore they ſhould furniſh equal proportions of ſeed: and where *Bráhmanas* or others jointly undertake agriculture on their own fields and with their own ſeed-grain reſpectively, and the agreement is nearly the ſame with that above mentioned, the text is applicable to them. In the firſt caſe, let the partners in huſbandry cultivate land other than common paſtures and ſo forth; two verſes (LI 3 and 4) are intended to direct this: a direction concerning land and ſo forth was neceſſary for partners in huſbandry. Both verſes, propounding the mode of diſtinguiſhing land, are intended to ſhow, that, in the third caſe, the land ſhould be equally good. At preſent it often happens that men join in cultivation for the produce of their own fields only. The direction concerning land is here a repetition of the ſubject of cultivation: ſome additional meaning is intended; that is, perfect equality is not required.

"Lean cattle, &c." This text is applicable to the three caſes*, and

* Cultivation by a ſingle huſbandman on his ſole account; by huſbandmen renting land in partnerſhip; by the ſeparate owners of land tilling the whole in partnerſhip.

and is intended as an inſtruction *to huſbandmen.* Thus, he who purchaſes cattle in the intention of cultivating land, ſhould purchaſe ſuch as are different from what is deſcribed in the text. It is incidentally mentioned; for if he poſſeſs not the price of excellent cattle, he may even accept ſuch as are there deſcribed, to employ them on his buſineſs. If the cattle, and ſo forth, belonging to all the partners in huſbandry, be bad, they may in that caſe be admitted; otherwiſe huſbandry could not be conducted in partnerſhip, were the cattle and ſo forth belonging to every partner bad: and it is indicated by the expreſſion "who are equally provided, &c." (LI 2). The exception againſt the cattle deſcribed removes the doubt, whether cattle, being equal in number, may be admitted, though unequal in ſtrength and other qualities: therefore parity is required, according to circumſtances, in ſtrength, qualities, and number.

In the ſecond caſe, the text, as explained in the *Vivâda Chintâmeni*, directs, (V. li 6), that the loſs ſhall be ſuſtained by him through whoſe want of materials the field has lain fallow. Thus one partner is appointed to ſow one field, and the other partners being ſimilarly appointed *to different parts of the joint buſineſs*, if the field remain unſown by the fault of the cattle belonging to one partner, and cannot, from the exceſs of rain, be ſown on a ſubſequent day, and the field therefore remain fallow; in this caſe, grain equal to the produce of ſimilar fields ſhall be deducted from his ſhare; or if ſeed furniſhed by one partner be ſown in a field cultivated by all the partners, and no plants vegetate, the ſeed being old and bad, in that caſe alſo it is his loſs. In the caſe where the partners join in the cultivation only, if the field of one remain unſown, from the fault of another's cattle, he is entitled to receive, from the owner of the cattle, the *eſtimated* value of a crop from that field.

If one of the partners in huſbandry be unable to act, his taſk ſhould be finiſhed by another perſon; for YÁJNYAWALCYA ſays, "this law is declared for partnerſhip among prieſts who jointly officiate at holy rites, and among huſbandmen or artificers" (XXXI). The ſhares ſhould be diſtributed in proportion to the cattle or things furniſhed; and ſeed and the like ſhould be taken in proportion to the quantity of land or the number of cattle: but if the proportions of ſeed and the reſt be unequal, the adjuſtment

ſhould

ſhould be made on their value, otherwiſe there can be no certainty in regard to the ſhares: however, ſhould there be a ſpecifick agreement for unequal ſhares, the diſtribution muſt be made accordingly. All ſhould join in preſerving the field and the like: if one refuſe to contribute to its preſervation, he ſhall forfeit his ſhare of the profit: and profit is thus aſcertained; "what remains over and above the price of cattle, ſeed, &c." If one preſerve the common ſtock by the utmoſt exertion, he ſhall receive a tenth part of it. Him who has recourſe to fraudulent ways, let the partners expel without profit (XXXI): conſequently, ſhould a fraud committed by one of the partners be detected after the land belonging to all the partners has been ſown in the month of *Bhádra;* in that caſe, reſtoring to him his ſtock in ſeed, cattle, and the like, and giving him half the produce of his own land, let them expel him: but if they cultivate in partnerſhip the king's land, the payment of half the produce to the partner expelled is not admitted. Should one of the partners die, let the king, or other perſon, according to circumſtances, keep his ſhare of the ſtock, and deliver it to the heirs *when they appear.* All this, premiſed under the head of Partnerſhip in Trade, muſt alſo be underſtood in this caſe.

LII.

VRÍHASPATI:—A manufacturer of gold *and ſilver,* of baſer metals, of thread, of wood, ſtones and leather, or a man who is ſkilled in minute diſcrimination, is called, by the learned, *ſilpí,* or *artiſan:*

2. And, when goldſmiths and the reſt exerciſe their arts jointly, they ſhall receive pay in due ſhares according to their work.

One reading gives, "a manufacturer of gold, ſilver, and leaves," that is, leaves of the palm-tree and the like. CHANDÉSWARA reads "thread," *(ſútra* inſtead of *patra.)*

"A manufacturer of gold and the reſt;" one who alters the form of the ſubſtance; who works it up, from a *ſhapeleſs* lump, into

into ornaments or the like. " Skilled in minute diſcrimination ;" well acquainted with minute parts ; able to diſtinguiſh the portions of copper or ſilver contained in gold and ſo forth ; diſcriminating the ſmooth and good parts of leaves, wood, and the like ; or minutely acquainted with the natural qualities of the ſubſtances, and able to diſtinguiſh them.

Manufacture and ſuch minute diſcrimination are ſeverally called arts ; but both united conſtitute ſuperior art : thus, if ſome goldſmith knows not the aſſay of gold, but makes ornaments and the like, he is an artiſan ; and ſo is one who does not manufacture, but aſſays gold : and herein many unite ; becauſe many are required to confirm an aſſay. It is objected, ſince there can be no joint exertion in aſſaying gold and the like without property, there can be no ſeparate head of Judicial Procedure ; therefore the *ſpecifick* mention of this was ſuperfluous in diſcuſſing the title of Concerns among Partners. It ſhould not be anſwered, when ſeveral perſons are jointly employed in aſſaying gold belonging to any man, there is partnerſhip : were it ſo, it ſhould be mentioned under the title of Non-payment of Wages, for they are hired workmen. Nor ſhould it be argued, that " ſkilled in minute diſcrimination " is not an independent term, but an epithet of " manufacturer," and that the ſenſe is, " a manufacturer of gold and ſo forth, if he be ſkilled in his art, is called *ſilpí*, or artiſan." Were it ſo, a manufacturer unſkilled in his art, not being *expreſsly* mentioned, would be excluded from this head of Judicial Procedure : if ſkill muſt neceſſarily be ſuppoſed in all manufacturers, the epithet is ſuperfluous ; and it is irregular to employ it as a deſcriptive, *and conſequently ſuperfluous*, epithet. Nor let it be argued, that perſons who are ſkilled in aſſaying buy and ſell gold and the like : by their ſkill in aſſay diſtinguiſhing bad gold from good, they buy cheap and ſell dear ; and thus the mention of ſkill in aſſay has a reference to ſtock. Were it ſo, this would fall under the head of Partnerſhip in Trade. To the objection thus propoſed, the anſwer is, when gold or the like is intruſted to a goldſmith to work into ornaments and the like, and he receives hire in proportion to the ſpecifick quantity aſcertained by weight or otherwiſe, he is called a workman, but of a different deſcription from thoſe named in treating of ſlaves and hired ſervants. Some perſons aſſay gold and the like for many different

different traders; they are not the particular ſervants of any one man, but receive pay in proportion to the ſpecifick quantity aſcertained by weight or otherwiſe, and are called artiſans: at preſent ſuch perſons are often ſeen in the employment of ſorters of money. From the practice of ſuch a ſcience, do they become artiſans? This, like the manufacture of ornaments and other arts, not being included among the eighteen ſciences, ſhould be conſidered as a mechanical art.

Thus ſome expound the text. Others explain the term "ſkilled in gain," that is, well acquainted with the wages due to his labour; and this knowledge is an excellent qualification for an artiſan. The ſenſe is the ſame on the reading of CHANDÉSWARA and others; "well knowing the fruit *of his labour*" (*phalábhijnya*, inſtead of *calábhijnya*).

JITÉNDRIYA, HELÁYUDHA, and VÁCHESPATI MISRA read "baſer metals" inſtead of ſilver (*cupya* inſtead of *rúpya*). There is no material difference. Leather is in the plural number to imply other ſubſtances; for rope, balls of ſilk, bones, and other things muſt be underſtood, according to the circumſtances of the caſe: otherwiſe, there would be no particular rule for ſuch arts.

"According to their work" (LII 2): according to the work performed by four partners reſpectively, they ſhall receive their reſpective ſhares. For example, one melts the metal; another hammers the maſs of gold or the like into the form of ornaments; a third ſolders the parts; and a fourth prepares the parts to be ſoldered. They ſhall receive pay according to the work thus or otherwiſe diſtributed.

LIII.

CÁTYÁYANA:—If four artiſans be jointly employed, a young apprentice, a more experienced ſcholar, a good artiſt, and a teacher, they ſhall receive, in order, one ſhare, two, three, and four ſhares, of the pay *divided into ten parts*.

Theſe four (the apprentice, the ſcholar, the artiſt, and the teacher,) are diſtinguiſhed by their ſkill in manufacture.

The *Retnácara*.

There-

Therefore, the pupils who melt metals, and ſo forth, under the directions of a teacher or other artiſt, receive one ſhare; and the pupil ſhould neither be the apprentice of another, nor one maintained by the inſtructor himſelf: conſequently there is no contradiction to the text, which ordains that the teacher ſhall receive the gain on his pupil's labour (Book III, Chap. I, v. 20). But ſome hold, that the pupil's ſhare is mentioned in contradiſtinction to the more experienced ſcholar and good artiſt, and that the pupil's ſhare ſhall be received by the inſtructor.

The more experienced ſcholars, already taught, execute coarſe work; they are inferior to the good artiſt, becauſe they are unable to execute fine work. The good artiſts, having acquired experience, and being already ſkilled in manufacture, execute fine work, ſuch as ſoldering the parts: in ſhort, they nearly accompliſh the buſineſs. The teachers inſtruct all the workmen as pupils; or, equal to the good artiſts, they alſo know the quantity of the parts, and are therefore in ſo much ſuperior to them.

If there be an apprentice and teacher only, and no experienced ſcholar or good artiſt, what is the rule in that caſe? Who executes the work of the experienced ſcholar and good artiſt? If the apprentice do it, he is an artiſt: therefore the teacher ſhould receive four ſhares; and the artiſt, three ſhares of the pay divided into ſeven parts. If he do not cauſe him to execute the work of a good artiſt, the teacher ſhould be puniſhed. But if there be a ſpecifick agreement in this form, "thou ſhalt only perform the work of an apprentice," the work of the experienced ſcholar and good artiſt being executed by the teacher, he ſhall receive nine ſhares; and the pupil, one ſhare only. If the apprentice execute the work of an experienced ſcholar, and the teacher perform his own part, and that of a good artiſt, the apprentice ſhall receive three ſhares; and the teacher, ſeven *ſhares of the pay divided into ten parts*. In fact, the definitions of apprentice and the reſt are delivered in conformity with the etymological ſenſe of the terms; but he who, under the directions of another, any-how executes work with occaſional miſtakes, is an apprentice if he be ſubordinate to another. He who previouſly inſtructed, but, from want of practice in the particular exertion of manual labour, being incapable of fine work, executes buſineſs ſlowly, is called

"a more experienced ſcholar." He who is capable of executing work, and is practiſed in the application of manual labour, but ſometimes has occaſion to aſk inſtructions, is called a good, a ſkilful, or an able artiſt. But the inſtructor, like a teacher of the *Védas*, directs others, and can accompliſh the work with certainty. In this mode ſhould the law be interpreted: conſequently there is no definite work for the apprentice and the reſt.

In this caſe, hire, ſalvages, and ſo forth, muſt be underſtood as in partnerſhip among traders: and if any thing be deſtroyed by the fault of one among four perſons, it muſt be made good by him; the owner ſhould not refuſe to pay the wages of all the workmen. But if any thing be taken on a falſe pretence, in the preſence of the teacher, who brought the good artiſt and the reſt, the wages of all the workmen may be withheld; and the others ſhall receive their ſhares of pay from the teacher, or from the perſon in fault. This and other caſes muſt be underſtood.

LIV.

VRĬHASPATI:—Where ſeveral men jointly build a houſe or a temple, or dig a pool, or make utenſils of leather, let the chief workman receive a double ſhare of the pay.

"The chief workman;" the principal workman.

The *Retnácara.*

Some remark, that diſtinct ſhares, directed for four perſons (the apprentice and the reſt), ſhould be underſtood of work other than the building of a houſe and the like: for VRĬHASPATI has not ordained ſuch a diſtribution in the caſe of a houſe and ſo forth; but the principal workman employed in the building of a houſe and the like, ſhall receive a double ſhare, and the others equal ſhares of the pay. But that does not coincide with the *Retnácara*, where it is ſaid, 'the text of CÁTYÁYANA (LIII) ſuppoſes one perſon giving, and another receiving inſtructions; in other caſes the chief workman ſhall receive a double ſhare: and thus there is no inconſiſtency.' Therefore, ſhould an experienced

perienced ſcholar and a good artiſt only join in the work, without one perſon giving, and another receiving directions, the rule follows the text of VRĬHASPATI. The preſence of perſons giving and receiving directions does not ſuppoſe a teacher and pupil, but a workman of little ſkill, and another of great ſkill.

The meaning conſequently is this: firſt mentioning the manufacture of gold, ſilver, cloths and ſo forth, and afterwards the building of a houſe, the legiſlator anſwers in the laſt text (LIV) the queſtion which ariſes on the former text (LII); "how ſhall pay be received according to the work in all caſes, whether it be the manufacture of gold, or other work?" In all caſes, whether it be the manufacture of gold or other work, the chief workman ſhall receive a double ſhare of the pay: and the text of CÁTYÁYANA is irrelevant. It ſhould not be argued, that the text of CÁTYÁYANA relates to caſes other than the manufacture of gold and ſo forth; for the *laſt* text (LIV) provides for other caſes. Nor ſhould it be argued, that both the texts of VRĬHASPATI are reciprocally illuſtrative of a general ſenſe, but do not comprehend other caſes. Were it ſo, that would be derogatory to the Sage, ſince a law muſt exiſt in regard to work not mentioned in either text. It is ſaid, the firſt text (LII 1), interpreted in the ſame ſenſe with the text of ÇÁTYÁYANA, may be a declaration of the law for the caſe where four artiſans are jointly employed; and the laſt text (LIV), where two workmen are employed. It ſhould not be objected, that a different mode of partition is incongruous, becauſe leather is mentioned in both texts. There may be different modes of partition, the laſt text intending ornaments or utenſils of leather, and the firſt, other manufactures of the ſame material: thus, when a covering of leather for a car is ordered by the owner, if one workman be ſkilful, and others be alſo employed, the chief workman ſhall receive a double ſhare of the pay. To this propoſed expoſition the anſwer is, it does not ſeem reaſonable to deſtroy the concordance between two texts of VRĬHASPATI's own code, *merely* for the purpoſe of reconciling one of them with the text of another legiſlator. In fact, ſince there can hardly be perſons receiving and giving inſtructions in the building of a houſe, or the digging of a pool, and the like, the

rule of diſtribution between two workmen might be ſuggeſted; but, four perſons being required for the manufacture of ornaments, the rule of diſtribution among four is proper: and this reſults from what is ſaid in the *Retnácara*. Thus, in building a houſe, one man carries the bricks and other materials; but another, being an intelligent workman, conſtructs the edifice: ſo, in building a habitation of graſs and wood, ſome perſon brings and throws up the graſs, wood, or other materials, and another conſtructs the houſe. In digging a pond, one digs the ſpots which are marked to prevent inequalities, or notices what ſhould be taken or left by all the workmen; the others dig after him. In making utenſils of leather, one ſews the leather; the others, as pupils, ſtretch it. Is there not employment for four perſons in building a houſe, as well as in making ornaments? Thus, one carries the bricks; another removes their inequalities, and fits them for the pillars or other uſes; another again cements them in their proper places; a fourth, to raiſe a ſtraight wall of maſonry, cauſes the bricks to be placed properly: in a building of graſs or wood, one man carries the wood; another cuts away rotten parts with an axe, and fits the wood; a third, by labour, joins two timbers; a fourth lines the wall. In all three inſtances, reference may be made to ſkill in work: and the ſame may be underſtood of other work, as the caſe may be. To this queſtion the anſwer is, if it be ſo in regard to the wall, ſtill there is no employment for four perſons of different deſcriptions, in roofing the houſe, nor in conſtructing a houſe of bamboos, or building a houſe with unburnt bricks. In the text above cited (LIV) the term "houſe" intends ſuch houſes. But where there is employment for four perſons, the former text (LII 1) is applicable: and this is actually ſaid by the author of the *Retnácara*; 'the text of CÁTYÁYANA ſuppoſes one perſon giving, and another receiving, inſtructions:' and the ſame ſhould be underſtood of other caſes. If three perſons join in work, then the diſtribution ſhould be ſettled in this form; for the rule is admitted, becauſe they are included by their employments in the deſcriptions of apprentice and ſo forth.

Thus ſome expound the law. In ſome provinces it is the practice, in regard to the roofs of houſes, to give the ſame pay to the man who throws up the graſs, and to him who makes

faſt the ſtring, but leſs than the pay of the thatcher: and in building houſes of maſonry, greater wages are given by the owner to one employed as chief workman, than to the others who aſſiſt him; but other labourers again carry the bricks, and perform the reſt of the labour. This and other uſages ſubſiſt. There can be no benefit from expatiating on the ſubject; for, wages are paid according to ſettled uſage, and workmen are employed on ſpecial agreements. So much has been ſaid to explain the law: it ſhould be received as above explained.

LV.

VRĬHASPATI:—This has been ordained by wiſe legiſlators for a band of muſicians: let him who marks the time ſkilfully take a ſhare and half, and let the ſingers have equal ſhares.

"He who marks the time ſkilfully" *(tālajnya)*; "*tāla*" is explained by AMERA, meaſuring time and performance: that again is explained in the commentary on his dictionary, "the meaſure of the appointed time of utterance, one or two moments; and the diſcrimination of exact performance. Conſequently, in the caſe of ſinging, the utterance of certain letters *or ſyllables* of the ſong, after once, twice, or thrice uttering certain other letters *or ſyllables*, is meaſurement of time, and called *tāla*: in fact it ſignifies meaſuring the time during which a word or ſound muſt be held, and the time when another ſyllable ſhould be uttered after the utterance of that ſound; as in the verſe of the *Gītagō vinda*, "*Herir iha mugd'ha bad'hū nicarē vilāſini vilaſati cēliparē**, a momentary pauſe is made at "*herir iha;*" and the ſound of *the laſt ſyllables of* "*badhū*" and "*nicarē*" is prolonged during the twinkling of an eye, or during half that time, or during a very minute ſpace of time: this is called meaſuring time. Meaſure of performance conſiſts in regulating the effort of the ſinger with his tongue or other organ of ſpeech to utter the letter or ſyllable:

* HERI exults in the aſſemblage of amorous damſels. Aſiatick Reſearches, vol. iii. pa. 187. Or, as verbally tranſlated by the ſame hand, HERI, O *my* amorous *friend*, delights in the higheſt of pleaſures, in this aſſemblage of beautiful damſels.

the intimation of it by a contemporary ſtamp of the foot on the ground, or by clapping the hands, is called *(tâla)* beating time. Though all the common acts to be done by the dancer, the muſician, and the reſt, with the utterance of low ſounds, be not indicated, nor even the performance of loud muſick, yet the ſtep or geſture correſponding with a difficult paſſage is marked; how is the performance of a dancer and the reſt meaſured? By the word "performance" ſteps and ſo forth are ſignified: conſequently the hint to perform a certain ſtep or geſture at the ſame time with the utterance of a certain ſound, with which ſound it ought to be performed, is the meaſure of performance, and is called *tâla*: meaſure is in this inſtance explained diſcrimination, and that conſiſts in diſtinguiſhing the parts of the performance to be executed at a certain time, namely that a certain act muſt be done immediately after a certain time: this is mentioned as ſuggeſted by the ſingle term of "fingers." But, in fact, whatever act is to be done, or ſound to be uttered, immediately after a certain time, and whatever ſtroke on the ground or the like with hand, foot, and ſo forth, is to be given during the performance of muſick at a certain time, according to the laws of muſick and ſinging, the notice of that time, or hint for the performance, is meant by "meaſuring time and performance." Conſequently beating time *and prompting* is applicable to ſinging, playing, dancing, and ſo forth.

Was it not ſuperfluous to ſay, "let the fingers have equal ſhares;" for that was already ſuggeſted by the allotment of a ſhare and a half to him who marks time ſkilfully, ſince the marking of time belongs to ſinging only? No; for the term "marking time ſkilfully" denotes one who is ſkilful in marking time. Conſequently he who teaches the reſt to obſerve time ſkilfully, is denoted by the term. In this country ſuch a man, in ſinging and the like, is the man who begins the ſong; for the reſt ſing as they are inſtructed by him, and the muſician alſo plays the muſick adapted to that ſong. In dancing and the like, a muſician is ſometimes *the leader of the band;* ſometimes a dancer *leads it:* All this ſhould be underſtood; for ſuch a practice is remarked.

The term "this law" extends the law for artiſans to a band of muſicians. Conſequently, if perſons of two deſcriptions are employed as fingers and muſicians or the like, the rule of diſtribution

tribution among two perſons is applicable; but if it be an employment of perſons of four deſcriptions, the rule in regard to four perſons is applicable: ſo, if there be employment for perſons of three deſcriptions, the rule of diſtribution among three perſons muſt be underſtood. "A ſhare and a half;" half more than one ſhare; let him who marks the time ſkilfully take one ſhare, together with half a ſhare: ſo the *Vivâdâ Chintâmeni* and *Retnâcara*. If ſome *of the muſicians* die, their ſhares of the pay, for ſo many days as they were employed, ſhall be delivered to their heirs, or to the king; and let the king receive them for ſafe cuſtody: but let the aſſociates of the deceaſed cauſe the work to be finiſhed by ſome other perſon, whether the employment be that of ſinging or dancing.

LVI.

VRĬHASPATI:—If, *in time of war*, any property ſhould be brought from the hoſtile territory by robbers, *or irregular ſoldiers*, authorized by their lord, they ſhall give a ſixth part of it to the king, and divide the reſt among themſelves in due ſhares.

2. Let their chief receive four ſhares; the moſt valiant of them, three; the moſt active, two; and the reſt ſhare and ſhare alike.

The *Vivâda Chintâmeni* explains the "chief," he who exerts mind and body; "valiant," reſolute; "active," poſſeſſing ſuperior ſtrength. But CHANDÉSWARA, ſo explaining the chief and moſt valiant, ſays the third deſcription means active in compariſon with the reſt.

Where robbers make incurſions, one of them commands as their leader; ſome, armed with bows, ſwords, or the like, are poſted on the road to prevent the motions of the people; others plunder; and the reſt carry the loads: ſuch an arrangement is ſignified by the text. The commander is the chief; for, ſkilled in counſel, uniting the reſt, knowing the means of ſubſiſtence, he is pre-eminent: and all the reſt act by his orders. This is expreſſed in the gloſs, "he who exerts mind and body." His

aſſociates, who recede not from battle, but deſpiſe death, are deſcribed by the term "moſt valiant:" and theſe are poſted on the road to prevent a ſurpriſe. Others, while the enemy is repelled by the moſt valiant, plunder foreign houſes: theſe are deemed moſt active. Thoſe who carry loads, furniſhing corporal labour only, are inferior to the reſt, and they receive ſhare and ſhare alike. "Active," expounded in the *Vivâda Chintâmeni*, poſſeſſing ſuperior ſtrength, will intend the ſame, if it be explained as denoting a perſon endowed with the ſtrength requiſite for breaking open doors, to enter foreign houſes.

The ſhares ſhould be diſtributed according to the numbers of each deſcription: thus, if there be one chief, ten valiant, four active, and eleven inferior robbers, the plunder ſhould be divided into fifty-three parts; but if the active robbers be able to perform the office of the moſt valiant, they may each receive three ſhares by ſpecial agreement.

LVII.

CÁTYÁYANA:—Of *an enemy's* property, brought from a foreign country by robbers commiſſioned by their lord, the king ſhall have a tenth part; and they ſhall divide the remainder by this rule:

2. The leader of the robbers ſhall have four ſhares of it; the braveſt of his men, three; the moſt active, two; the others, equal ſhares.

3. If one of them, when they ſet out on their adventure, ſhould be taken priſoner, whatever he may give for his ranſom the reſt ſhall pay equally with him.

CHANDÉSWARA ſays, "a tenth part, or ſixth part, ſhould be underſtood according to the nearneſs or diſtance of the foreign country." But MISRA holds, that the texts carry an implied ſenſe. Thus, if the king protect the robbers, he ſhall receive a ſixth part; being very diſtant, if he do not take meaſures *to protect them*, he ſhall have a tenth part only. Others hold, that

a ſixth

a ſixth part ſhall in general be received, for taxes have been ordained at the ſame rate: but if the expenſe and toil of the robbers be great, in conſequence of their going to a very diſtant country, the king ſhall only receive a tenth part; and this rate ordained by the text is in the nature of a favour: it muſt be underſtood that the king ought not in this caſe to receive more than a tenth part.

"If one of them ſhould be taken priſoner, &c." if one of the robbers going to and fro be taken priſoner, and pay ranſom to the captor for his releaſe, the remainder of the plunder, after deducting what is given for his ranſom, ſhould be divided in the mode above mentioned: but if the ranſom be given after partition, it ſhould be paid in equal ſhares by all the robbers; as ſuggeſted by the text, "the reſt ſhall pay equally with him;" and becauſe what had been already given, could hardly have been received before his capture. Such is the opinion of MISRA, and likewiſe of CHANDÉSWARA; but he expounds "taken priſoner," confined or ſtopped. In fact that ſhould be admitted; for if he be taken priſoner, he muſt of courſe be confined near the royal reſidence; and if he be ſtopped, being watched, it is poſſible he may afterwards be taken priſoner: it is therefore neceſſary that he ſhould, if poſſible, give money to ſatisfy the guards. That ranſom is diſburſed for *the behoof of* all the robbers. Virtually the ſame ſenſe is deduced from both expoſitions. If one be taken priſoner, the reſt may alſo be apprehended on his information: therefore his ranſom is a benefit to the reſt. This appears to be the meaning of the Sage.

From the mention of partition, after giving a part of the plunder to the king, it follows that the robbers have property in the wealth ſeized by them: and that property is by occupancy, as the king's right of property, acquired by conqueſt, in the wealth of a foreign realm. The king honeſtly acquires property in that wealth gained by occupancy, through his own exertions, by victory in a juſt war againſt another armed prince of equal power (Chap. IV, v. XX). But the property of robbers, acquired by occupancy, through their own exertions, in an unjuſt war, unauthorized by law, againſt men ſleeping, unacquainted with the uſe of arms, and deficient in ſtrength, or by intimidating *the owners*, belongs to the quality of darkneſs (Chap. IV, V. xxvii 3).

Is not wealth ſtolen by a ſingle robber, from the manſion of a ſleeping houſeholder, the property of the robber? VÁCHESPATI BHATTÁCHÁRYA anſwers in the affirmative.

It is ſaid, a perſon taking property which lies before the owner ſitting and awake, may make it his own. It cannot be objected, that the property, which is thus veſted in the thief, is annulled by the occupancy of the owner. Even in the caſe of conqueſt, the conqueror's property would be annulled by the occupancy of the hoſtile prince. That is wrong; it muſt be affirmed, as is reaſonable, that occupancy is not a mere acknowledgement *of ownerſhip or acceptance of poſſeſſion*, but the exerciſe *of it:* thus, wherever kings, acknowledging no human ſuperior, exerciſe authority approved by the law, even there property ariſes; the exerciſe *of dominion over effects* by men, (whether they be robbers or not,) who acknowledge a human ſuperior, namely a king, if it be authorized by him, takes full effect; he who exerciſes ſuch *dominion* has property. If the exerciſe *of dominion* by powerful robbers be admitted, even without the king's authority, ſtill the occupancy of a proprietor, ſupported by the double power of the king, and of juſtice, prevents the occupancy of a weaker thief: and thus the property is in the owner, not in the thief. In the caſe of conqueſt and defeat of kings, whoever ſurpaſſes another in regal duties, in juſtice, and in armed forces, can prevent another's occupancy; and property is veſted in him: thus the right is aſcertained by diſcriminating the power of occupancy, *or retaining poſſeſſion;* and property ſo eſtabliſhed muſt neceſſarily be admitted.

Others deduce from the expreſſion, "property brought by robbers authorized by their lord" (where the word lord intends the king), that robbers acquire a title to what is ſeized by them with the king's aſſent, as warriors gain property in the wealth of a foreign country. But robbers, unauthorized by the king, do not acquire a title *to effects ſtolen.* SÚLAPÁNI does not admit the property of thieves in ſtolen goods; and the text quoted from NÁREDA ſuppoſes robbers authorized by the king.

That is queſtionable. Since it is neceſſary to eſtabliſh occupancy as the obvious cauſe of property in waifs, and in the wealth of foreign *conquered* kingdoms, the right of unauthorized robbers, ſuggeſted by the literal ſenſe *of the text*, cannot be diſproved without

without much trouble; and there appears no occaſion for ſuch trouble: the reverſe of the literal ſenſe of NAREDA's text would not be pertinent.

What then is the meaning of the expreſſion, "authorized by their lord?" It intends puniſhment of *robbers* ſeizing the property of others without authority from their lord; for, the *Mahábhárata* and other works direct that robbers ſhould be expelled from the kingdom: but thoſe who rob with permiſſion from their lord are his ſubjects, acting in his ſervice. Such a king is contemptible, becauſe he receives property partaking of the quality of darkneſs, and becauſe he injures others. But, if any king, not afraid of *committing* injuſtice, act in this manner, the Sage has taken the trouble of regulating the partition: but this legiſlator has not authorized robbery. The expreſſion "brought from a foreign country," forbids the authorizing of robbery in his own dominions, leſt the kingdom be deſtroyed. But if any thieves rob in their own country, the ſame diſtribution of ſhares ſhould be underſtood: and, ſhould they rob without the king's aſſent, whether it become known to the king or not, their ſhares ſhould be the ſame. This and other *rules* may be inferred from reaſoning.

If thoſe robbers be taken priſoners, what is the mode of proceeding in that caſe? The king ſhould cauſe the property to be reſtored *to the owner*. What king? he who protects his ſubjects, or he who protects robbers? The king who protects his ſubjects ſhould cauſe the property to be reſtored *to the owner*. Shall the robbers in that caſe be puniſhed or not? *The anſwer is*, how ſhould the king puniſh them, ſince he is not their lord? Who ſhall receive the ſixth part which is payable to the ſovereign? The payment of it by the robber being neceſſary, he ſhall pay it to the king before whom he is brought. Should the protector of the robbers enter into a conteſt with the prince who protects his ſubjects? Though it be not directed by the law, he ought, on the reaſon of the law, to contend with him: for, how ſhould he remain ſilent, having himſelf authorized the ſeizure of the property of others? and, the robbers having acquired property, partaking of a dark nature, in the ſtolen goods, if he do not contend with a foreign king who ſeizes thoſe goods, how does he protect his own ſubjects? Or, if he do not protect them, how

can

can he take revenue? for it would be inconſiſtent with the following text:

LVIII.

MENU:—That king who gives no protection, yet takes a ſixth part of the grain as his revenue, wiſe men have conſidered as a prince who draws to him the foulneſs of all his people.

If he cannot give protection, let him reſtore the ſixth of the grain he has received; and the king, even though he *generally* protect his ſubjects, ſhould not take his revenue from them if he cannot recover their property from robbers.

Some hold, that the king, for the purpoſe of protecting the owners of property, ſhould puniſh robbers whoſe place of abode is in a foreign territory; for, no diſtinction is intended, in the following text, between robbers coming from foreign countries, and thieves reſiding in his own dominions.

LIX.

MENU:—In reſtraining thieves and robbers, let the king uſe extreme diligence.

It is conſiſtent with common ſenſe to puniſh robbers apprehended by guards, whether they be inhabitants of foreign countries or of the ſame province. It is no judicial practice, nor induction of common ſenſe, that, when robbers taken in the fact are brought before the king by his officers, he ſhould inquire, and inflict puniſhment, if he diſcover them to be inhabitants of his own dominions, but releaſe them if they be inhabitants of another country. Were it ſo, there would be no puniſhment for robbers who live in mountains and caves ruled by no king.

If robbers coming from foreign dominions be puniſhed when taken in the fact, their puniſhment cannot afterwards be oppoſed; nor can their protector interfere to prevent their chaſtiſement. But the unjuſt king, apprehending the publicity of the protection

protection which he affords to robbers, though he may deſpiſe the conſequences of his iniquity, may not *be willing to* make his conduct publick. It is ſaid, he is not guilty of injuſtice in protecting the robbers. That may be true, but he ſhould himſelf inflict puniſhment. He ought not to authorize robbery, nor ought he to permit pain to be inflicted on another whom he has authorized to rob.

But, in the caſe of robbery without *previous* authority, he truly authorizes it when he receives a ſixth part of the plunder. But if he receive not that ſixth part, he ſhould himſelf puniſh the robbers, or reſtore the goods to the owner. If robberies be committed in his dominions with his permiſſion, ſince it is neceſſary that he ſhould protect both *the owner and the thief*, he ſhould cauſe the property to be reſtored to the true owner, and himſelf pay a fine, caſting the amount of that fine into the water. But, according to the opinion of thoſe who do not admit the amercement of kings, penance only ſhall be performed. If there be an univerſal monarch, poſſeſſing authority over all countries, and to whom all *other* princes are ſubordinate, may he impoſe fines on kings? This queſtion ſhould be examined under the title of Robbery.

We may affirm, that, for the purpoſe of obtaining victory over a foreign and ſtronger kingdom, a king deſirous of reducing the power of that kingdom commiſſions robbers, that the ſubjects diſtreſſed by their depredations may deſert that realm, and that the riches of that kingdom may be thus diminiſhed, and victory be obtained over it. This text has been delivered by the Sage as a rule of partition among robbers in ſuch caſes. The robbers have property in goods ſo taken, as warriors have property in horſes and elephants of war, in arms, and the like: but property in wealth acquired by conqueſt in open war partakes of the quality of truth (LVIII); and the property of robbers partakes of the quality of darkneſs; for it is gained by exciting terror, or by the murder of unarmed, timorous, and ſleeping men, and is diſapproved by the law. However, the law permits *a king* to reduce *the power of* a *foreign* kingdom by means of robbers, with a view to conqueſt; but the recourſe to robbery from a motive of avarice, to increaſe his own treaſure, is not juſtifiable: the law does not aſſent to the depredations of a king influenced by avarice;

rice; and the Sage has not declared a rule of partition for ſuch caſes. But *obedience to* the law itſelf, not avarice, muſt be the motive for the conqueſt of a foreign realm.

LX.

YÁJNYAWALCYA:—Whatever be the *rights and* duties of a king protecting his own realm, even all thoſe devolve on him who ſeizes a foreign kingdom.

To expatiate *on this ſubject* would be ſuperfluous.

LXI.

CÁTYÁYANA:—The law *before* propounded relates to all partners, whether merchants, huſbandmen, robbers *commiſſioned in war time*, or artiſans, when they have made no ſpecial agreement for their ſhares.

When they have not made a ſpecial agreement reſpecting their ſhares. CHANDÉSWARA ſo expounds the text. Some explain it, "when they make a partition without having *previouſly* ſettled what ſhall be the ſhare of each *partner*."

Other partners, not already mentioned, are comprehended in this text, as ſervants, boatmen, and others, working in partnerſhip. In theſe caſes alſo, the chief is entitled to a double ſhare. If the labour be of three, four, or more kinds, one additional ſhare is allowed for each degree of ſuperior labour: however, it ſhould be admitted, from the reaſon of the law, that the ſhares ſhall be equal, if the labour be of different natures, but equal.

If ſome king, or rich man, employ learned perſons to compile a ſyſtem of law, that the law may be *generally* underſtood, and juſtice be obſerved, or to compoſe a poem for his gratification, or a work of any other kind, and give wealth to them for their maintenance, or as a token of reſpect; then alſo, if he

make

make not ſeparate gifts to each, this ſame rule is applicable. Thus, if the labour be of two kinds, the gifts ſhall be diſtributed in ſingle and double ſhares; if it be of three or more kinds, the diſtribution ſhould be made accordingly, in the mode formerly mentioned. It ſhould not be argued, that the ſhares may be regulated as in the performance of ſolemn rites; for, in the preſent inſtance, there are no *Brahmà*, *Brâhmanâchch'hanſi*, and ſo forth, to give occaſion for ſuch a regulation of the ſhares.

Another incidental obſervation may be made: if the work be jointly compoſed by a teacher and pupil, a maſter and ſervant, or the like, there is no ſuch rule of diſtribution. If the teacher, or other principal perſon, have promiſed any thing, even that ſhall be given; otherwiſe it is optional. The teacher and the maſter, not the pupil or ſervant, ſhall ſhare what is given as a recompenſe by the king or other *employer*. So likewiſe, if any loſs ariſe. *But*, if the loſs happen by the fault of the pupil or ſervant, the blame is imputable to that pupil or ſervant: if the book fail by his fault, it is his loſs. If the teacher die, or be diſabled, what was receivable by him may be taken by his heirs; and they ſhould complete the work themſelves, or by means of others. But, ſhould there be no ſpecial agreement concerning an employment for a long ſpace of time, the work and the gain may be regulated at the pleaſure of the king, or other *employer*. Alſo, ſhould the pupil die, the rule is ſimilar; but here the option, *allowed* to the teacher, or his heir, is included in the caſe noticed of the king's option. The ſame ſhould be underſtood where many join in compoſing a work, according to their reſpective ſuperiority. Theſe and other rules may be inferred from reaſoning, by a ſimple exertion of intellect.

So, in joint conqueſt and in joint purchaſes, whatever ſhare a partner has in the principal ſtock, ſuch ſhall be his ſhare of what is acquired: and the exertions for the preſervation of the ſtock, and ſo forth, ſhould be proportioned to the ſhares in the principal ſtock. Similar deciſions ſhould be given in the caſe of barter in partnerſhip, and alſo in other caſes.

CHAP. IV.

ON

SUBTRACTION

OF WHAT HAS BEEN GIVEN.

SECT. I.—*On Unalienable Property.*

I

VRIHASPATI:—This law, reſpecting concerns among partners, has been fully declared: *the law concerning* what may or may not be given, and what is or is not a valid gift, ſhall be next propounded.

Concerns among partners have been unfolded; undue gifts and the reſt are next "unfolded." The conſtruction of the ſentence reſumes this term from the context, becauſe the ſenſe requires it.

II.

NÁREDA:—When a man deſires to recover a thing which was not duly given, it is called ſubtraction of what has been given; *and this is* a title of adminiſtrative juſtice.

2. In civil affairs, the law of gift is four-fold; what may

may or may not be given, and what is or is not a valid gift:

3. Things which may not be given, are eight; what may be given, is declared to be of one ſort *only:* know valid gifts to be of ſeven ſorts; void gifts aſſume ſixteen forms.

The man who, not having duly given a chattel, wiſhes to retract the donation, is called a recanter of gift, and *this* is a title of law: he contends for withdrawing what has been given. Thus ſimple men interpret the word from its etymology: it intends a man who pleads that he has not duly given what the other party affirms to have been duly given. Others read, "what a man, &c. *(yat* inſtead of *yah)*." Some take the word "it" indeclinably; for, the dictionary of AMERA explains the co-relatives, "what, that; why, therefore:" becauſe he deſires *to withdraw the gift*, therefore the title of law is ſubtraction of what has been given. It follows, that the title of law refers to the wiſh *of retracting the gift*, or to the gift retracted.

The term uſed by MENU (Chap. I, v. II 1) denotes payment *or delivery;* non-delivery of what has been given is retraction of it. Delivery here intends a perfect gift: its converſe is an imperfect gift, and is a title of law, namely ſubtraction of what has been given. Given denotes the intention *of the giver expreſſed in this form*, "let this be thine:" *the word interpreted* ſubtraction, may ſignify imperfect *or undue* donation; where that exiſts, there is imperfection of gift. In the text of NÁREDA, "*on what ground,*" and "*that being aſcertained in his gift,*" may be ſupplied: "on what ground a man deſires to retract a donation, that being aſcertained in his gift, &c." for it has the ſame import with the text of MENU: the imperfection of the gift cancels it; accordingly the text expreſſes "not duly given." There is no difficulty in including under this title a man who deſired to retract a gift which is *afterwards* determined to have been duly given, ſince a ſuit *at law* exiſts previous *to that deciſion:* but on the conſtruction propoſed by ſimple men, "not duly" would be unmeaning. Thus ſome interpret the text. But CULLÚCABHATTA explains the term employed in the text, "withdrawing

or

or taking back." According to his interpretation, "*recovery deſired*" muſt be ſupplied in the text of NÁREDA: "when a man deſires to recover what has been given, the recovery deſired by him is retraction of what has been given, and this is a title of adminiſtrative juſtice."

The gift may be imperfect, becauſe the thing is unalienable, or becauſe it is given by a perſon not entitled to give it. Thus the gift may be imperfect, becauſe the chattel is unalienable, or becauſe it is improperly given, or becauſe it is given to a wrong perſon, or without the aſſent of the father and ſo forth, or at a time when the donor is defiled. So MISRA. This will be explained in another place, it is here mentioned incidentally.

"In civil affairs, &c." (II 2): the rule to be eſtabliſhed, that gifts made by a man afflicted with diſeaſe and the like are void, regards civil gifts, not donations for a religious purpoſe. This title of law does not extend to a gift made for a religious purpoſe: the donation is valid, if it be made by the owner *of the thing*.

III.

CÁTYÁYANA:—What a man has promiſed, in health or in ſickneſs, for a religious purpoſe, muſt be given; and if he die without giving it, his ſon ſhall doubtleſs be compelled to deliver it.

RAGHUNANDANA and other authors expound this text, "what a man, even afflicted by ſickneſs, has promiſed to give, muſt, if he die, be given by his ſon." It is not proper to ſay, that what he has promiſed muſt neceſſarily be delivered, but the gift is not valid. The rule muſt be underſtood of other caſes as well as of ſickneſs; for the reaſon of the law is equally applicable.

"The law of gift is four-fold;" literally, the path of donation (II 2). The ways of arriving at, or receding from, the annulling of property, and thereby effecting donation, are four. Thus, by the way of void gifts, the act recedes therefrom; by the way of valid gifts, it arrives thereat: the reſt will be evident in courſe. The wiſh of retracting an invalid gift takes effect; the wiſh of withdrawing a valid gift is fruitleſs. This is the whole

rule

rule concerning ſubtraction of what has been given; for an invalid gift only may be withdrawn.

Wherever the gift is invalid, *the property* is actually recovered: how then does the man "wiſh" to recover it? Where effects are poſſeſſed by another under the ſemblance of a gift, a doubt ariſing whether they ſhall or ſhall not be recovered, the Sage directs that they ſhall be recovered if it be aſcertained to be *merely* the ſemblance of a gift, but ſhall not be recovered if that be not aſcertained. An invalid gift *is mentioned* to determine that the ſuppoſed donation is void.

Should not gifts be here ſaid to be of two ſorts, valid and invalid? why are they denominated from what may or may not be given; *for* there is no proper diſtinction, in treating of this ſubject, between what may and may not be given, and what is, and is not a valid gift? Simple men reply, both are noticed incidentally: both are mentioned to denote that the gift of a ſon or a wife is imperfect, becauſe they ſhould not be given. For what purpoſe is it ſaid that the gift of what may not be given is imperfect? The anſwer is, it appears that a fine is incurred by ſuch a gift. Thoſe things, in the giving of which there is ſin, ſhould not be given: and that ſin is not expiable by penance alone; for, were it ſo, ſuch gifts ſhould be diſcuſſed under the title of Penance *and Expiation:* being noticed under the head of Judicial Procedure, it appears that the giver of what ſhould not be given ſhall be amerced. Thus ſome *expound the law:* their opinion will hereafter be conſidered.

VRĬHASPATI has not mentioned the term "ſubtraction of what has been given;" but mentions the four-fold *diſtinction* of what may or may not be given, and what is and is not a valid gift: the rule muſt be deduced from the acceptation of the terms, 'what may not be given, &c.'

The eight things which may not be given are thus enumerated:

IV.

NÁREDA:—What is bailed for delivery, what is lent for uſe, a pledge, joint-property, a depoſit,

a ſon, a wife, and the whole eſtate of a man who has iſſue living;

2. The Sages have declared unalienable even by a man oppreſſed with grievous calamities, and, *of courſe*, what has been promiſed to another.

+ What is bailed for the uſe of another *(anwâhita)* is a diſtinct kind of bailment, explained in the chapter on Depoſits. It is mentioned to ſhow that it is comprehended under the general term of depoſit, by the ſame rule by which one name of kine may denote cattle of that ſort, and a ſynonymous term in the ſame ſentence may intend cows only: conſequently, there is nothing inconſiſtent with the number of eight *unalienable things*.

May it not be ſaid that pledge and loans for uſe ſhould not be repeated, for they are nearly allied to depoſit? Some diſtinction may be admitted; becauſe a pledge is connected with debt, and a loan for uſe gives dominion over the chattel to one who is not the owner: but bailment for delivery is a mere repetition, for the owner's dominion *over the chattel ſubſiſts in full force*; a thing depoſited through the intervention of another, a chattel bailed by an abſent man, and the like, are depoſits generally, for they are only diſtinguiſhed by minute differences.

MISRA reconciles the number by joining the words ſon and wife into one compound term: "a wife with a ſon, mentioned conjointly:" conſequently, there is nothing inconſiſtent with the eight-fold diſtinction premiſed. But the text ſhows that a wife and a ſon may not be given, as the expreſſion "the father goes with his ſon" denotes that both go.

V.

VRÍHASPATI:—The prohibition of giving away is declared to be eight-fold: a man ſhall not give joint property, nor his ſon, nor his wife, *without their aſſent in extreme neceſſity*, nor a pledge, nor all his wealth *if he have iſſue living*, nor a depoſit, nor a thing borrowed for uſe, nor what he has promiſed to another.

In

In this text bailments for delivery and the like ſhould be underſtood as comprehended under the term depoſit.

Is it not ſuperfluous to declare that depoſits and the like may not be given? for, in their nature, they are unalienable, becauſe they are the property of another; elſe it ſhould alſo be ſaid that the property of another, actually enjoyed by the owner, may not be given by a ſtranger. Conſider it as mentioned for the ſake of an amercement impoſed on him who gives away depoſits and the like. Is there no puniſhment for him who gives away the property of a ſtranger under other circumſtances, that depoſits and the like ſhould be *ſpecially* declared unalienable? Since, under other circumſtances, the property of a ſtranger cannot be given away without theft, the giver ſhall be puniſhed as a thief: but, conſidering that depoſits and the like, being actually in the depoſitary's power, might be given away *without ſuſpicion of theft*, the beneficent Sage has declared them unalienable.

Others remark, that VIJNYÁNÉSWARA admits the creditor's property in a pledge; and the property of the borrower, in a thing borrowed for uſe and the like, may alſo be admitted: but the right of the owner is not annulled; *it ſubſiſts* like the concurrent property of huſband and wife: therefore the borrower, but not a ſtranger, may, with the aſſent of the owner, aliene at pleaſure a chattel borrowed for uſe. Thus, on the grounds of ſuch a ſubordinate property, a gift or other alienation might be made; but the Sage prohibits the gift (IV 1), becauſe that property is ſubordinate.

A gift of depoſits and the like, made by miſtake, is not valid (Chapter II, V. xxvii). Therefore depoſits and the like, given away by miſtake, may be recovered. With a view to this, MISRA has ſaid, "the gift may be imperfect," becauſe the chattel may have been unalienable." Others affirm, that creditors and the reſt may create, by gift or the like, an intereſt equal *and ſimilar* to their own.

"Joint property" (IV 1) is explained, in the *Ratnácara* and *Chintámeni*, what belongs to more than one owner. Therefore the ſenſe is, that one brother ſhall not, without the aſſent of the reſt, give away undivided wealth held as the property of ſeveral brothers.

Shall he not give away the whole of the joint-property; or

ſhall he not give away the amount of his own ſhare? On the opinion of JÍMÚTAVAHANA delivered in his gloſs on the text of VYÁSA (Chapter 2, V. vi), "becauſe the family would be injured by a ſale, gift, or other *alienation*, effected by a diſtreſſed coheir as part-owner *of joint property*," ſome remark, that, if it were intended to forbid the ſale or gift of the whole, the author would have ſaid "they would be deprived of the means of ſubſiſtence if a gift or ſale were made," thereby forbidding *the alienation of the whole*. There is no difference whether the ſale or gift of the whole wealth be made by a parcener diſtreſſed or not diſtreſſed; conſequently, it would be vain to contend for a partition or the like, with a diſtreſſed man, who had ſold the amount of his own ſhare *of the joint-property*: to obviate this conſequence, even a parcener's ſale or gift of his own ſhare without the aſſent of the coheirs is forbidden. Such is the principle *of the rule*: and here, from this prohibition of the ſale or gift of his own ſhare without the aſſent of the coheirs, it appears that the parcener ſhall be puniſhed if he do ſo; for the texts of NÁREDA and others, under the head of Judicial Procedure, ſhow that joint-property may not be given away. At preſent, parceners do not make gifts or ſales of undivided land, or other property, without the aſſent of the coheirs; each ſays, "how ſhould I ſell it? this property is not divided." Such is the general cuſtom in ſome countries. But certain lawyers hold, that, if a parcener give or ſell his own ſhare, the king does not impoſe fines on trifling occaſions; or the parceners, from indolence, or conſidering it as fruitleſs, do not inform the king: in this view *of the matter*, cuſtom permits parceners to give or ſell the amount of their own ſhares. If the maintenance of his family cannot be *provided by a parcener* without the ſale of that property, and his wealthy coheir neither make a partition, nor conſent to the ſale, what ſhall be done in that caſe? The king, they ſay, on the application of the perſon who wiſhes to ſell *his ſhare*, ſhould give attention to the matter. But here it muſt be underſtood, that joint-property is unalienable without the aſſent of the coheirs: however, ſhould the gift or ſale be actually made, it is valid; for the following text may relate to the amount of the reſpective portions *of joint-property*, as well as to divided ſhares; and the will of the owner being a ſufficient cauſe of veſting property in another,

other, the parcener may not be able to bear the delay of partition, or of obtaining the aſſent of his coheir.

VI.

NÁREDA:—If they ſeverally give or ſell their own *undivided* ſhares, they may do what they pleaſe with their property of all ſorts, for ſurely they have dominion over their own.

It ſhould not be objected, that the aſſent of coheirs ſhould be eſtabliſhed, under the authority of the text, as a neceſſary aſſociation for the diſpoſal of another's right in undivided immoveable property: thus, without the union of all the *requiſite* cauſes, the effect of conferring property on another does not take place. Since the text may be pertinent in the ſenſe above mentioned, it is wrong to impoſe the difficulty of eſtabliſhing ſuch an aſſociation. Herein SRÍCRĬSHNA TERCÁLANCÁRA concurs. But if a parcener, without the aſſent of his coheirs, give the whole joint-property, the gift is null; for the joint-property of all cannot be deveſted by the act of one.

It is queſtioned whether his own property be, or be not, annulled by the act of a ſingle parcener. It ſhould not be ſaid that his own property is not annulled, becauſe the gift, being improperly made, is in its own nature imperfect, and is void as the act of a man partly deſtitute of ownerſhip. There is nothing to prevent the annulling of *his own* property, ſince the gift, which he himſelf makes with the intention of annulling the rights of all the parceners in that chattel, is the act of an owner, of whom property is predicable. Conſequently the ownerſhip of the giver appears in this inſtance to be alienable: but the ownerſhip of the reſt ſubſiſts *in full force*. The meaning of ancient authors, who hold a gift of joint-property to be void, is the ſame. But a parcener's gift of his own ſhare is valid. All the brothers have each their reſpective predicable property in all the effects.

It ſhould not be objected, that, when the father dies, if one common property in the ſame thing be veſted in ſeveral brothers; and, ſhould one of theſe die, if the right of all the parceners be

48724

annulled, and another property be veſted in the *ſurviving* brothers, together with the ſon of the *deceaſed* brother, it is troubleſome repeatedly to eſtabliſh joint-property veſting in many perſons; therefore the property in the effects veſts in the perſons ſeverally. After the death of a brother, it being neceſſary to eſtabliſh a ſingle property veſting in his ſon after the annulling of his ſingle property, we find, *ſay theſe lawyers*, no greater difficulty in eſtabliſhing a property not diſſimilar predicated of many perſons. It muſt be therefore eſtabliſhed, that the ownerſhip of all is, or is not, annulled by the act of one; not that the giver's right is annulled; and that the property of the reſt ſubſiſts. Theſe lawyers therefore think that the gift of one may be valid as the gift of all.

To that argument there is this objection: it ſuits the opinion in which property is referred to things; but it does not accord with the ſentiments of the *Naiyáyicas*, who diſſent from that opinion, and refer property to perſons: thus it is difficult to eſtabliſh that the ownerſhip of all the brothers is annulled upon the death of one; and no quality, except conjunction and the like, is acknowledged to be inherent in two individuals *at the ſame time*. Or, admitting ſingle property, ſtill there is no difficulty. Thus, after the right of all the brothers has been annulled on the death of one, a ſingle property ariſes predicated of the ſurviving brothers and the heir of the deceaſed; not a diſtinct property predicated of the heir alone. In the preſent caſe alſo, after the right of all the parceners has been annulled by gift, property ariſes predicated of the other parceners and the donee; for gift only creates a property ſimilar to that held by the owner, *who makes the gift*.

Is it ſale *or gift* without ownerſhip? What objection is there to its being *conſidered as* a true ſale *or gift* without ownerſhip? For it might be ſuppoſed that he ſhall be puniſhed as a thief for ſuch a gift or ſale; yet that *puniſhment* is not *inflicted* in this inſtance, becauſe the law has forbidden it (Book V, V. ccclxxvii 4); in the caſe of poſſible theft only, that puniſhment is conſiſtent with common ſenſe. But ſome hold, that it is not ſale without ownerſhip, becauſe the parcener is not a perſon different from the owner of the chattel.

Then what ſhall be the puniſhment? The penalty directed for the gift of what is unalienable. That penalty will be quoted from

JIMUTAVÁHANA and others, as expreſsly declared by MENU. This ſhould be well examined.

It muſt be noticed, that if a parcener, without the aſſent of his coheirs, give or ſell, to any perſon, ſome one chattel out of the whole undivided property, at a ſubſequent time, when partition is undertaken, that chattel ſhould be included in his ſhare.

Shall all the parceners divide the value of the effects *aliened?* or ſhall the other parceners receive back their portions of thoſe effects, and the *donee or* buyer recover the price of their ſhares from the *donor or* ſeller? If the other parceners conſent that the effects aliened ſhould become a part of his ſhare in the joint-ſtock, then it may be included in his allotment: but if they do not conſent to that adjuſtment, nor to receive their ſhares of the value, they may recover their ſhares of the effects. Otherwiſe they may *ſeverally* inſiſt, "this chattel muſt be received by me, it ſhall not be given to that brother; diſtribution ſhall be made by lot." But, in fact, there can be no diſtribution by lot in this inſtance; for the ſeller, whom that diſtribution would concern, is no longer an owner. It cannot be ſaid, thoſe effects are of courſe included in the ſeller's ſhare. All the brothers having ownerſhip in thoſe effects, that ownerſhip is not annulled.

Should it not be ſaid, that, according to the opinion of JÍMÚTAVÁHANA, who contends for diſperſed property, *veſting ſeverally in the coparceners*, ſale, as well as diſtribution by lot, determines the property *in particular chattels*; otherwiſe a parcener ſelling any chattel, and conſuming *the produce of the ſale*, would be guilty of embezzling the property of another? It cannot be affirmed that there is no difficulty, becauſe CATYÁYANA directs that his offence ſhall be *patiently* borne (Book V, V. ccclxxvii 4). Still, in the apprehenſion of ſin, the penance directed for caſes of doubt would be requiſite; and he who conſumes much, would undoubtedly be a ſinner. A diſſimilar property is not created, but a right proportionate to the ſhare *of the donor or vender:* and if it be affirmed that he who ſells for his ſubſiſtence that which he occupies is proved to have had property therein, it follows, that a ſingle ownerſhip exiſts in effects ſold for ſubſiſtence, and the other parceners would not be entitled to a ſhare of the effects ſo aliened. This queſtion is thus anſwered: it is a maxim, that penances are ſimilar to puniſhment; exemption from penance

is therefore implied in exemption from puniſhment. The laws which ordain partition by lot and otherwiſe, aſcertain property; but occupancy and the like does not aſcertain it. If the property be doubtful, all the parceners are not entitled to ſhares; but, in this inſtance, if a ſale be made for *neceſſary* conſumption, the ſeller ſhall not be puniſhed: otherwiſe, he may be chaſtized. It ſhould not be objected, that the parceners could not receive equal ſhares, becauſe the property cannot be determined by the deciſion of arbitrators, without the mutual aſſent of the contending parties *to the appointment of them*; and diſtribution by lot has been already ſet aſide. In this caſe no diſtribution by lot does take place; but the other parceners do not abandon their ſhares. The arbitrators, to whom their complaint of the parcener's illegal act is referred, rejecting the vender's plea, adjudge equal ſhares to all the parceners: and the notion of a property which requires ſpecifick mutual aſſent *to authorize alienation*, ſuppoſes a *common* right veſting in all the parceners, like their property in a ſingle ſlave, or the like. For this purpoſe, the gift or alienation of undivided effects without the aſſent of coheirs is prohibited: a parcener is not forbidden to give his own ſhare generally, without ſpecifying particular chattels, in this form; "I give you my ſhare;" for then the donee may be admitted, like a parcener, to a diſtribution by lot: but, even in that caſe, the aſſent of coheirs is required for the alienation of immoveable property (XIX 5).

Joint-property is wealth belonging to more than one owner. MISRA ſays, 'the gift is invalid, becauſe a man has not full dominion over joint-property, a wife, or a ſon: and the want of dominion, *in the other inſtance*, is *deduced* from the *ſame* reaſoning, *which proves it in the caſe* of joint-property.' By "the ſame reaſoning" he means that the ownerſhip of one cannot be annulled by another. From MISRA'S expoſition it is inferred, that a parcener's gift of his own ſhare of undivided property is void. But, to reconcile the two opinions of *different* authors, we adopt the ſenſe inferible by reaſoning, and ſay, a gift of the whole joint-property is void, not a gift of the parcener's own ſhare. Thus the donor cannot, at his own choice, annul the ownerſhip of others: *but* he is not debarred from aliening his own ſingle right in the joint-property; for ſuch acts by partners in trade are often ſeen in *common* practice. This may be ſtated as the opinion

of

of VÁCHESPATI BHATTÁCHÁRYA, and VIJNYANÉSWARA. Therefore, the gift is valid as far as the donor's ſhare is concerned; but he ſhall be puniſhed, and muſt perform penance. Such is the rule ordained concerning gift, or other *alienation*, of what may not be given. 'That a thing may not be given' denotes that the gift is attended with ſin: for this form of ſpeech bears the ſenſe of the imperative. It does not denote that the gift is a void act: were it ſo, it would not differ from a void donation; and full dominion would not be noticed under this title of 'what may not be given.' If it be ſaid, this title is intended to ſhow puniſhment *for ſuch gifts*, it is anſwered, this form of prohibition implying offence, the offender ſhould be puniſhed. Thus the gift of things which are enumerated among thoſe which may not be given, is puniſhable; gifts enumerated among thoſe which are void, are utterly null; and thoſe noticed under both heads, are both *void and puniſhable:* as the gift of a depoſit, or the like, of another's ſhare in undivided property, and ſo forth.

In regard to a ſon or a wife, MISRA ſays, that the gift is void for want of full dominion. It appears, under the authority of the text, that there is no full dominion over a ſon and a wife who do not conſent to the ſale. Here this objection *occurs:* if a father, or huſband, have power to give away a ſon, or wife, it ſhould appear that they have the dominion of owners over them; and having ownerſhip, how can their gift be void, being made by perſons neither inſane, nor otherwiſe incapable? and theſe are not enumerated among void gifts. Conſequently the donation, even without their aſſent, is valid; but the donor ſhall be puniſhed, for they are found in the number of unalienable things *and perſons.* In the text of CÁTYÁYANA (VII) the gift or ſale of a ſon or wife, without the aſſent of the parties intereſted, and without extreme neceſſity, is forbidden: it is not ſaid that the gift or ſale is void.

VII.

CÁTYÁYANA:—A wife, or a ſon, or the whole of a man's eſtate, ſhall not be given away or ſold without the aſſent of the perſons intereſted; he muſt keep them himſelf:

2. But,

2. But, in extreme neceſſity, he may give or ſell them *with their aſſent;* otherwiſe, he muſt attempt no ſuch thing: this has been ſettled in codes of law.

"Without *the* aſſent *of the perſons intereſted,*" (that is, of the ſon, wife, kinſmen and ſo forth,) theſe muſt not be ſold nor given away*. If he neither give nor ſell them, where ſhall he place them? The Sage replies, "he muſt keep them himſelf." MISRA obſerves, that if *the perſons intereſted* do not aſſent *to the gift or ſale,* theſe three *(the ſon, wife, and the whole of a man's eſtate)* muſt be retained by himſelf. Even with their aſſent, they can neither be ſold nor given away unleſs in extreme diſtreſs (VII 2). It is wrong to affirm, that, after forbidding the gift or ſale of a ſon and the reſt without *the* aſſent *of the perſons intereſted,* the admiſſion of ſuch a gift or ſale in extreme diſtreſs ſhows that *the gift or ſale* may be made in ſuch circumſtances even without *the* aſſent *of the perſons intereſted.* NÁREDA, forbidding *ſuch a* gift or ſale, even in extreme diſtreſs (IV), would contradict CÁTYÁYANA. Therefore, in the utmoſt diſtreſs, a ſon and the reſt may be given away, with *the* aſſent *of the perſons intereſted:* but, even in ſuch circumſtances, the gift may not be made without their aſſent. Such is the demonſtrated rule.

A ſon is alſo given for the purpoſe of adoption; *this being done* as *an act of* duty to relieve the adopter's diſtreſs ariſing from the want of male iſſue, no penalty is incurred: the aſſent *required* is *found in* the want of oppoſition; for, it is a rule that not to forbid is to aſſent. Therefore the gift of a ſon under the age of five years may be valid; and it appears that a donation may have force even without *the* aſſent *of the perſons intereſted.* Since the gift of an unſuitable ſon, even though he do not aſſent, is valid, therefore the father may have full power to give away *his ſon;* and, from parity of reaſoning, the ſame may be underſtood in regard to the gift of a wife. It ſhould not be objected, that, under the authority of the text, the gift of a ſon or wife is valid without their aſſent, if they do not oppoſe the donation; but in the gift of an infant there can be no oppoſition *made by him.* It is troubleſome to

* I omit a grammatical diſquiſition juſtifying the uſe of the maſculine gender in the inſtance of a participle governed by unconnected words of the three genders.

to prove want of oppoſition *an* aſſociated *cauſe* for the validity of *an act* deveſting property, which is an effect of acts to which the aſſent of the owner is abſolutely required. If a ſon be given with his conſent, but in no extreme diſtreſs, ſhall the donor be puniſhed? It is ſaid, both the utmoſt diſtreſs and *the* aſſent *of the perſons intereſted* being mentioned as cauſes of gift or ſale, if either be wanting, it appears that puniſhment ſhall be *inflicted*: otherwiſe the mention of extreme diſtreſs would be unmeaning. Who will inform the king? Any-how informed of it, the king may of himſelf aſcertain the fact, and impoſe an amercement; as is ſhown in the caſe of *perſons guilty of* drinking ſpirituous liquors and the like.

Some remark on the words of MISRA, "the gift of a ſon or wife, without their aſſent, is not valid," that the dominion over the ſon or wife is annulled by a gift made without their aſſent: but no property veſts in the donee; for a ſon or wife, being rational beings, are very different from kine, gold, or the like. After the dominion over the ſon or wife was annulled, before property could veſt in the donee, they became independent at the moment when dominion was annulled; and the father or huſband having no dominion, his gift was then an act done without ownerſhip. If that be true, is not every donation invalid, even *the gift* of cattle, of gold or the like, or of an infant under the age of five years; for there is a momentary want of ownerſhip? The father or other perſon having dominion at the very time when the gift is made, it may be *conſidered as* one made by an independent perſon: but here the ſon ſubſequently becoming independent, the gift is invalid without his aſſent; for it is reaſonable to juſtify property by the *joint* gift or ſale of every independent perſon concerned. After fifteen years, a ſon is independent, if his parents be dead (XV). The independence of a ſon, after his parent's intereſt ceaſes, being thus declared, the gift of an infant five years old is valid. How can paternity be valid in reſpect of ſons ſelf-given and the like; for they commit themſelves to a father before the age of five years, and were not independent, there age being leſs than fifteen years? In the want of another owner, ſuch adoptions being neceſſary, their independence may be admitted in practice. Both opinions ſhould be well examined.

VIII.

VIII.

VASISTʼHA: —A ſon formed of ſeminal fluids and of blood proceeds from his father and mother, as an effect from its cauſe: both parents have power, *for juſt reaſons*, to give, to ſell, or to deſert him; but let no man give or accept an only ſon, ſince he muſt remain to raiſe up a progeny for *the obſequies of* anceſtors. Nor let a woman give or accept a ſon, unleſs with the aſſent of her lord*.

"Nor let a woman give or accept a ſon:" give, having a ſecondary ſenſe without loſing its literal meaning, comprehends ſale and the like. CHANDÉSWARA.

Conſequently, by parity of reaſoning, "may not be given," in the text of NÁREDA, denotes alſo that they may not be ſold: and by *the ſame* parity of reaſoning, the term cannot be taken in the ſecondary ſenſe of ſale only, when thus employed in a ſingle text.

"Both parents have power, &c." Have the father and mother power jointly *to give, to ſell, or to deſert a ſon*; or, *have they that power* ſeverally? Not the firſt: a gift made by the huſband alone, after the death of his wife, would be void; but this is not intended, for, by declaring that a wife has not power to give *a ſon*, it is implied that the huſband has that power. If the ſecond conſtruction be deemed admiſſible, ſtill the huſband's *previous* aſſent is required for a gift made by a widow.

A gift made by the huſband while the wife is living, without her aſſent, to a perſon requeſting it for the adoption of a ſon given, would be valid. This cannot be admitted. Were it ſo, that given ſon would not be forſaken by his mother: though a woman be dependent, the alienation of female property, or of *a mother's* rights over her ſon, by the gift of the huſband *alone*, is not valid in law or reaſon. It is ſaid, the word "or," which occurs in many texts concerning ſons given, ſhows the right both of the father and mother ſeverally to give a ſon: but there is this difference:

* See the remainder of the text in Book V, (V. cclxxiii.)

ference: "if the father be living, with his aſſent; if he be not living, without it." And from this expoſition of CHANDÉSWARA it is eſtabliſhed, that *parents* have that right ſeverally: but the filiation to another perſon muſt be admitted without deſertion of the mother. This will be more fully diſcuſſed in book *the fifth*, On Inheritance, under the title of Sons given.

MISRA affirms, that "a woman cannot accept a ſon even with the aſſent of her lord, becauſe ſhe is precluded from the oblation to fire with holy words from the *Véda*, which is a part of *the rites on* the acceptance of a ſon, as will be mentioned under the title of Sons given." From this opinion VÁCHESPATI BHATTÁCHÁRYA and others diſſent; for it is not ſaid, by any author, that the principal object cannot be attained if a *ſecondary* part *of the rites* be prevented: women and *Súdras*, though precluded from ſacrifice, are obſerved to be qualified for diſmiſſing a bull on *ſolemn* occaſions. If adoption be null without an oblation to fire with holy words from the *Véda*, ſtill nothing prevents the validity of the acceptance: *and* by that acceptance, according to MISRA's opinion, *the child* would fall under the deſcription of a ſlave.

What ſome remark, that the wife has no right to give a ſon after the death of her lord without his previous aſſent, may be queſtioned; for, without an *expreſs* ordinance, a woman's right, inferible from the reaſon of the law, to annul her own property after the death of her huſband, without authority from him, cannot be barred. It may be examined, under the title of Inheritance, whether the child be a ſon given *by his parent*, or a ſon ſelf-given. Some explain it to be MISRA's intention, referring the text of VASISHT'HA to the ſon's aſſent, and, in his gloſs on that text, diſcuſſing the acceptance of a ſon given *for adoption*, to require the ſon's aſſent to the gift, even in the caſe of a ſon ſo adopted. This ſhould be examined: the filiation of a ſon given under the age of five years is legally valid; his then utterance of conſent would be taught like *the ſpeech of* a parrot or the like; there is no authority for admitting, in judicial procedure, words ſpoken by an infant under the age fit for buſineſs: therefore, in ordaining that "both parents have power to give, to ſell, or to deſert a ſon," his aſſent is required for the gift or ſale, if he be acquainted with affairs, *or adult in law*; and the acceptance of a ſon given *for*

adoption

adoption is diſcuſſed incidentally, becauſe the text may relate to that *ſubject*.

IX.

DACSHA:— Joint-property, depoſits for uſe, bailments in the form called *nyáſa*, pledges, a wife, her property, depoſits for delivery, bailments *in general*, and the whole of a man's eſtate, if he have iſſue alive,

2. Are things which the learned have declared unalienable even in times of diſtreſs: the man who gives them away is a fool, and muſt expiate *the ſin* by penance.

Here nine things are declared unalienable; but a ſon is not mentioned: including a ſon, ten things *and perſons* may not be given. VRĬHASPATI (V) declares the prohibition of giving away to be eight-fold: though depoſits may be conſidered as comprehended in his text under the term "*nyáſa*," ſtill female property is not included in that text; and what is promiſed, not included by NÁREDA *in the number of eight unalienable things*, is included in that number by VRĬHASPATI. On this mutual contradiction CHANDÉSWARA remarks: "it is not implied, that the enumeration of unalienable things, as delivered by other Sages, is curtailed by what each himſelf declares." Conſequently, where nine things are *declared* unalienable, it is true of eight; and if ten or eleven things be ſo, the ſame is affirmed of nine or eight.

The female property of wives, like the property of a ſtranger, may not be given; for there is a want of ownerſhip.

X.

CÁTYÁYANA:—Neither the huſband, nor the ſon, nor the father, nor the brothers, have power to uſe or to aliene the legal property of women.

2. If

2. If any one of them ſhall conſume the property of a woman againſt her conſent, he ſhall be compelled to pay intereſt *to her*, and ſhall alſo pay a fine *to the king**.

"Conſume" is here employed in the comprehenſive ſenſe of ſell, *or aliene*, &c.

"If there be iſſue alive" (IX 1): if there be a ſon, grandſon, or great grandſon, who have equal dominion *over the property*, it is ordained by NÁREDA and many other Sages, that the whole of a man's eſtate may not be given away: and if any perſon, though he have iſſue living, do give away his whole eſtate, he ſhall be fined. This is evident; and penance is alſo expreſsly directed by DACSHA. On the doubt whether the gift be valid, notwithſtanding the amercement and penance impoſed, MISRA ſays, "the gift of a pledge, a depoſit, and a bailment for uſe, is prevented by the want of property; and *the gift* of a ſon, a wife, a man's whole eſtate, and what has been promiſed *to another*, *is barred* by the authority of the text:" according to his opinion, the gift is not valid.

It ſhould not be objected, that, by ſaying "gift is prevented," it is not meant that ſuch a gift is utterly null, but that it ſhould not be made. The gift is invalid, becauſe the donor has not independent power over joint-property, a ſon, or a wife. The want of independent power *to diſpoſe* of joint property *is founded* on reaſoning; *the want of power to give away* a ſon, or a wife, againſt their conſent, *is founded* on the authority of the text; and MISRA ſubſequently ſays, that "*the gift of* a man's whole eſtate if he have iſſue living, and any perſon's *gift* of what he has promiſed to *another*, *are invalid* under the authority of the text;" for it is proper to refer his words to the invalidity of the gift, ſince the form of expreſſion implies a reference to what has preceded. Conſequently it is an eſtabliſhed rule, according to MISRA, that a gift of his whole eſtate by a man who has iſſue living, is invalid without the aſſent of the perſons intereſted. But this ſuppoſes gifts for civil, not for religious uſes; ſince it is recorded in *Puránas* and other works, that HERIŚCHANDRA and others gave their whole

* Cited in Book I, V. lxxiii. and again in Book V, Chap. ix.

whole property for religious purpoſes; and NÁREDA limits the preſent title to civil affairs (II 2).

If a man, reſerving a ſingle ſhell, give away all *the remainder of* his property, is the gift valid? It is ſaid, even in this caſe, the gift is not valid; for the prohibition of giving away the whole eſtate is founded on the conſequent diſtreſs of the family from want of ſubſiſtence. Therefore, after ſetting apart a ſufficiency for the ſubſiſtence of the family, a gift of the remainder is valid; but a gift of the whole eſtate, reſerving only a ſhell or the like, is not valid, as will be mentioned in explaining a text of VRÍHASPATI (XVIII 1): and JÍMÚTAVAHANA ſays, "a gift or other *alienation* of the whole eſtate is forbidden on account of the ſubſiſtence of the family; for the family muſt neceſſarily be maintained."

What is a ſufficiency for the maintenance of the family? Not ſo much as is conſumed in one day by the actual members of it; for that would be inconſiſtent with approved uſage; and duty would be violated, ſince the family might next day be deprived of ſubſiſtence.

XI.

MENU:—The ample ſupport of thoſe who are entitled to maintenance, is rewarded with *bliſs in* heaven; but hell is the portion of that man whoſe *family* is afflicted with pain by his neglect: therefore let him maintain his family with the utmoſt care.

This text forbidding the family to be left to pain *and diſtreſs*, the prohibition would be ill obſerved by maintaining them for one day only; the prohibition is obſerved by maintaining them for life.

Then, any-how eſtimating the duration of life, and ſetting apart a ſufficiency for their maintenance during that period, a man may give away the remainder of his immoveable property and the like. This is not conſiſtent with common ſenſe; and NÁREDA declares it neceſſary to preſerve wealth.

XII.

XII.

NÁREDA:—Even they who are born, or yet unborn, and they who exiſt in the womb, require funds for ſubſiſtence; the deprivation of the means of ſubſiſtence is reprehended.

"Funds for ſubſiſtence;" means of living. This is ſuppoſed by JÍMÚTAVÁHANA to be *meant of* wealth inherited from anceſtors; and immoveables conſtitute the beſt civil property: therefore the term is uſed in its acceptation of wealth generally. Reſerving a ſufficiency for conſumption until other moveable property be obtained, a man may give away his moveable effects. This is the whole meaning.

† Some hold it eſtabliſhed on the reaſon of law, that, ſetting apart a ſufficiency to maintain, for a long period, the preſent members of his family, and their families, as determined by five prudent perſons, a man may give away his immoveable property, and the exceſs of his moveable property above what is required for ſubſiſtence until other moveable property be obtained, as alſo determined by five prudent perſons. This ſhould be well examined, for neither opinion is expreſsly delivered by any author; but the laſt opinion may be deemed conſiſtent with ſettled uſage.

‡ JÍMÚTAVÁHANA does not admit the invalidity of a gift under theſe circumſtances.

XIII.

YÁJNYAWALCYA:—Of precious *metals or* ſtones, of pearls, coral, *and other moveables*, the father has power to give or ſell the whole; but neither the father, nor the grandfather, ſhall aliene the whole of his immoveable property.

XIV.

The ſame:—*Land or other* immoveable property,

and ſlaves *employed in the cultivation of it*, a man ſhall neither give away nor ſell, even though he acquired them himſelf, unleſs he convene all his ſons.

* Theſe texts, quoted by JÍMÚTAVÁHANA, merely forbid ſuch gifts or alienations to ſhow the immorality of the act, not to ſhow the invalidity of the gift or alienation. To this *remark* JÍMÚTAVÁHANA ſubjoins its grounds: "becauſe there is not in this caſe any property different from that which, in *the inſtance of* other effects, denotes a right of diſpoſing of them at pleaſure;" + and the fact cannot be altered even by a hundred texts: therefore the validity of a gift of land, whether inherited from anceſtors, or acquired by *the donor* himſelf, being admitted becauſe the | incumbent has ownerſhip, the ſame would be eſtabliſhed in regard even to the whole of a man's eſtate; for the ownerſhip is not different.

It ſhould not be objected, that if the validity of the gift, *as deduced* from ownerſhip alone, cannot be barred even by a hundred texts, then gifts which NÁREDA declares void (LIII) would be valid: but if the nullity of this gift be eſtabliſhed from the ſenſe of the words "not given," the invalidity of that gift may be eſtabliſhed from the ſenſe of the words "what may not be given;" and the expreſſion uſed in the text of YÁJNYAWALCYA, ſignifying diſqualification, the invalidity of the gift may be eſtabliſhed, as it is a gift by a perſon not entitled *to aliene ſuch property:* in regard to what has deſcended from an anceſtor, VRÍHASPATI will be quoted for the validity of the gift, if made with the aſſent of the coheirs (XVIII 4). It is ordained by YÁJNYAWALCYA and NÁREDA (LVIII and LIV), that, in certain caſes, the act is invalid or null, and it is proper to eſtabliſh the invalidity of ſuch gifts: but the term "what may not be given," ſhows a moral offence, elſe "what may and may not be given" would not be ſeparately propounded. The text of VRÍHASPATI ſignifies, that the gift has validity, becauſe, being made by one not ſuſpected of being influenced by luſt or the like, it is excluded from the number of void gifts; and becauſe there is no objection to its validity, ſince it is not the act of a perſon of unſound mind.

* Be it any-how in regard to the whole of a man's eſtate acquired

by himſelf, but the gift of what has deſcended from an anceſtor, by a man who has a ſon *living*, is void, becauſe he has not independent power *over that property*; for NÁREDA declares null a gift made by one who is not *an* independent *owner*; and the law, quoted by VÁCHESPATI BHATTÁCHARYA and RAGHUNANDANA, declares a father not to be independent.

XV.

Smṛiti:—While the eldeſt brother lives, the reſt are not independent; *but* ſeniority is founded both on virtue and on age:

2. All ſubjects are dependent, the king *alone* is free: a pupil is declared dependent; freedom belongs to his teacher:

3. All wives, ſons, ſlaves, and unmarried girls are dependent: and a houſeholder is not uncontrolled in regard to what has deſcended from an anceſtor.

4. An infant *(śiśu)*, before his eighth year, muſt be conſidered as ſimilar to a child in the womb; but a youth or adoleſcent *(pógenda)* is called a minor until he has entered his ſixteenth year:

5. Afterwards *he is conſidered* as acquainted with affairs, *or adult in law*, and becomes independent on the death of both parents; *but*, however old, he is not deemed independent while they live*.

The inference is wrong; for theſe texts do not propound a dependence invalidating civil acts. The ſenſe of the text is this: while the eldeſt brother lives, (eldeſt in age if all be equally virtuous, or younger in age but endued with qualities fitted for the ſupport of the family,) the reſt of the brethren ſhould not

 give,

* Cited in this place without the name of the author; but the three firſt verſes are quoted as NA'REDA'S, in the third article of the ſecond ſection: the ſubſequent texts are cited from CA'TYA'YANA in Book I.

give, ſell, or aliene at pleaſure, *any part of the eſtate*, without his conſent: the reaſon is, that, ſince they are maintained by his abilities, a gift or alienation, which may weaken his power to *maintain* them, would be immoral. All ſubjects reſiding with the king's aſſent on land owned by him, are occupied in the acquiſition of wealth; with his aſſent they may poſſeſs land; and if it be ſeized by another, the king will compel him to reſtore it: therefore it is proper that they ſhould make gifts or ſales with his aſſent. As long as a pupil reſides with his teacher, he ſhould not even eat without his order, *becauſe it is his duty* to pleaſe his teacher: thus it is recorded in the *Mahábhárata*, that UPAMANYA became blind from eating leaves of aſclepias, when forbidden to take food. A ſtudent ſhould not make a gift, ſale, or other alienation, without his teacher's permiſſion. Unmarried daughters, and other members of the family, are dependent; they can do nothing without the conſent of the houſeholder; for the maſter of the family partakes of the virtue and vice reſulting from the acts of women. It cannot be eſtabliſhed, that a gift of their own property, by theſe perſons, is invalid without the aſſent of their reſpective ſuperiors: nor does any one ſay, that, while there is a teacher, the ſtudent's gift of his own paternal property is invalid without the aſſent of his preceptor. Similarly, therefore, a gift made by a houſeholder, though he have ſons living, is valid without their aſſent, for it would be irregular to aſſign ſeveral meanings to the word dependent under the ſame head: but it is forbidden to give away, without the aſſent of the ſons, property, whether moveable or immoveable, which has deſcended from the paternal grandfather.

The ſenſe of the laſt text (XV 5) is, that the act of a minor under the age of ſixteen years is invalid, becauſe it is the act of an infant: after that age, his acts are valid; but it is neceſſary that he ſhould take his father's orders. If it be ſaid, that the ſenſe of the text is this: after the age of ſixteen years a youth is independent if his parents be dead; to prevent the validity of a ſale or alienation by an infant under the age of ſixteen years, whoſe parents are dead, or by a youth above that age, whoſe parents are living, two conditions are ſpecified; his age of ſixteen years, and the death of his parents: this interpretation is denied; for, the text mentioning that "he is *conſidered as* acquainted with affairs,"

affairs," ſhows him qualified for civil affairs in his ſixteenth year, and independent on the death of his parents. If "minor" and "dependent" were held the ſame, then NÁREDA would not have diſtinguiſhed a minor from a perſon who is not his own maſter (LIII 2): therefore, in that text, "not his own maſter" alſo denotes want of ownerſhip, not merely the dependence of a ſon, ſlave, or the like; elſe it might be objected, that a gift by a ſtranger, not enumerated among void gifts, would be valid. But a "perſon who is not his own maſter" has been explained by authors "ſon, ſlave, or the like," not ſuppoſing that gifts might be made by ſtrangers, but conſidering the poſſible doubt, whether, from near connection, the gift of a ſon, ſlave, or the like, be valid. † Dependence, declared in this text (XV), ſhows that conſent ſhould be taken: conſequently a gift made to the injury of the family, thereby deprived of ſubſiſtence, is *nevertheleſs* valid, and the receiver may diſpoſe of the effects at pleaſure; but the donor commits a ſin, and therefore he ſhall be fined, and muſt perform ſtrict expiation. Such is the conſtruction according to JÍMÚTAVÁHANA, and maintained by many *Gauríyas:* and JÍMÚTAVÁHANA remarks on this point, that the father has power over precious ſtones and other *moveables* inherited from the grandfather; and that it does not appear immoral to give away immoveable property exceeding the ſubſiſtence of the family.

If it be alleged, that a contract made by a perſon not independent is invalid; and ſince a contract made by a perſon who is not his own maſter is void (LIV), ſince the father is not independent in regard to what has deſcended from the grandfather, therefore his contracts in general being invalid, ſurely his gift is null: a contract made by a younger brother receiving food only, being invalid, ſurely his gift is null; as contracts made by ſuch a brother are not allowed by the wife, ſo it is declared, that a father has not power to aliene the whole of his immoveable property (XIII): if this be alleged, it muſt be conſidered that "not independent" there means "not in his own power" (LIV); and a contract made by a perſon influenced by luſt or the like, is void (LIII), becauſe in this inſtance there is ſuch a want of ſelf-dominion, and that want of ſelf-command prevents voluntary election. But that is not the caſe with a father in regard to wealth deſcended from the grandfather; for there is no-

thing to prevent his voluntary action. As for the inſtance of the invalidity of a contract made by a younger brother receiving food only, this muſt be underſtood of a caſe where the younger brother has conſented *to ſubjection*, or, from minority or other cauſe, is incapable of proper choice. Therefore this text (XV 1) may be well explained as coinciding with that which directs that the other brothers ſhould live under the eldeſt brother; and theſe texts having been otherwiſe explained, and the gift of wealth inherited from a grandfather not being included under the title of Void Gifts, the text of YÁJNYAWALCYA (XIII) is conſidered as a *moral* prohibition of *ſuch* gifts.

" The gift of a man's whole eſtate is valid; for it is made by " the owner: but the donor commits a moral offence, becauſe " he obſerves not the prohibition." The *Smṛitiſára*.

On the validity of theſe gifts two opinions are ſet forth; the ſubject will be further diſcuſſed under the title of What may be given (Sect. ii, Art. 1).

In fact, men waſte all their eſtate, and even their perſons, on the *ſolemnities at the* birth of a ſon; but from the text which expreſſes " a wife is a friend in the houſe of the good," and from the advantage ſhown *in the married ſtate*, greater affection is borne to the wife: the maintenance of her and of others being therefore requiſite, how ſhould a houſeholder, deſtroying their ſubſiſtence, give his whole eſtate to another for civil purpoſes, unleſs he be inſane or diſtempered? If the perſons entitled to ſubſiſtence be not exceſſively vicious, and the houſeholder, being mad, give away *his eſtate*, the donation is void; for a gift by an inſane perſon is enumerated by NÁREDA among Void Gifts: but if thoſe perſons be exceſſively vicious, they forfeit their title to maintenance, and the donation may be valid even according to MISRA's opinion. But if he make the gift, thinking virtuous perſons to be vicious; then, ſince the houſeholder could not diſtinguiſh right from wrong, his gift is not valid. The whole ſubject ſhould be ſimilarly examined: and if at any time it be conteſted whether ſuch a gift be valid or null, it muſt neceſſarily be then determined which opinion is beſt.

If a king give the whole of his dominions to his eldeſt ſon qualified for the empire, although his other ſons be void of offence, the gift is valid, provided it be the act of a prince neither inſane

nor

nor otherwiſe diſqualified; for it is done in conformity with the practice of former kings (as ſhown in ſacred and popular hiſtories) without offence on the part of the other ſons, or of their father. Thus DEŚARAT'HA * intended to commit his kingdom to RÁMA, in the preſence of VASISHT'HA and many other Sages, and in preſence of the citizens *at large*, although BHARATA and his other ſons were faultleſs; but afterwards, excluding RÁMA and the reſt, he gave his kingdom to BHARATA, as a boon to CAICÉYI †. Even now it is ſeen in practice, that entire kingdoms are ſeverally held by one prince, although he have brothers.

Some, remarking that the kingdom of AYÓDHYÁ was not divided, hold that kingdoms are indiviſible on the authority of cuſtom, although it be not expreſsly declared in the text of any Sage ‡. Though one kingdom may have been undivided, can the practice be grounded on the *Véda?* may it not have been ſome cuſtom accidentally *eſtabliſhed?* Let it not be ſaid, that the conſecration of the eldeſt ſon, to the excluſion of the reſt, appears from the ſpeech of VASISHT'HA in the *Rámáyana* of VÁLMICI.

"Among all the ſons of ICSHWÁCU §, the firſt born
"is king: thou, ſon of RAGHU ‖, art firſt born,
"and ſhalt this day be conſecrated to the empire.
2. "This preſcriptive law in thy family thou canſt
"not now reject, O ſon of RAGHU! Rule like thy
"father, far famed prince, the vaſt empire of the
"gem-producing earth."

The difficulty is removed by limiting this rule to the poſterity of ICSHWÁCU; for he ſays, "among the ſons of ICSHWÁCU," and adds, "in thy family." Shortly before *the paſſage quoted*, and after the curſe *pronounced by* JÁBÁLI, VASISHT'HA ſays:

* Fifty-fifth of the ſolar race.

† Wife of DES'ARAT'HA.

‡ This digreſſion is not altogether miſplaced; for the great poſſeſſions, called Zemindaries in official language, are conſidered by modern *Hindu* lawyers as tributary principalities: and it might ſeem neceſſary to determine whether they be alienable and hereditable by the ſame rules with other landed property.

§ Son of MENU, and firſt of the family named Children of the Sun.

‖ Fifty-third of the ſolar race.

"JÁBÁLI knows the courſe of this world; he has ſaid this, wiſhing to diſſuade thee."

It is implied by this verſe, that the Sages utter what is calculated to diſſuade RÁMA from his intention of retiring to the foreſt, in compliance with his father's commands. It may therefore be ſaid that the ſpeech is adapted to diſſuade RÁMA from his deſign of reſiding in the foreſt, and does not eſtabliſh an *univerſal* law, that the firſt born ſhall take the kingdom. When RÁMA aſcended to the abode of LACSHMÌ, his own ſons, and the ſons of his younger brothers, were ſeverally conſecrated to different portions of the empire: now RÁMA, wholly wiſe, and the inſtructor of mankind, did not act inconſiſtently with the law.

It ſhould not be argued, that, among the deſcendants of ICSHWÁCU, the eldeſt may not have been *always* conſecrated to the empire; but it was practiſed in the family of BHARATA*: thus when PÁNDU retired to the foreſt, his kingdom, governed by DHRÍTARASHTRA †, fell under the domination of DURYÓDHANA; but, recovered by BHÍMA and his brothers, was enjoyed by YUDHISHT'HIRA, and not ſhared by his brethren: therefore a kingdom is indiviſible. But the inauguration of the ſons of LACSHMANA, mentioned in the *Rámáyana*, was not a conſecration to the paternal kingdom, but to new dominions, given at the pleaſure of the donor, and conquered by their father: thus the two ſons of BHARATA were conſecrated kings of *Gandharva*, conquered by BHARATA; the two ſons of 'SATRUGHNA were conſecrated kings of two cities founded in the foreſt of *Madhu*, which had been conquered by 'SATRUGHNA; and two cities, founded in the region of *Carapat'ha*, were given to the two ſons of LACSHMANA. The younger brothers of RÁMA and the younger brothers of YUDHISHT'HIRA, *who were both* images of the ſupreme God and of deities, (*the firſt* born to ſlay RAVANA; *the latter*, to relieve the earth from *the* burden *of a multitude of tyrants*;) may have ſurrendered ſovereign power, from reſpect to their elder brothers.

It is ſaid, that the ſpeech of YUDHISHT'HIRA to ARJUNA, in the *Mahábhárata*, is delivered with conſideration of the reſpect due to ARJUNA and the other brothers, in the order of ſeniority:

"The

* Twenty-ſecond of the lunar race. † The blind elder brother of PA'NDU.

" The brave BHÍMA-SÉNA is worthy of dominion: what is empire to me, who am *thus* unmanned?

2. " I cannot bear theſe reproaches, which you utter in wrath: let BHÍMA be king; I wiſh not to live, O Hero! depreſſed as I now am."

In anſwer to the objection, how can YUDHISHT'HIRA, ſpeaking from his own affliction, be affirmed to reſpect ARJUNA as next in ſeniority? It is added, that he acknowledged it on account of his dejection at his own unfitneſs for war; and there is no intention of denying the ſeniority of ARJUNA: accordingly the conſecration of the five ſons of YAYA`TI*, an anceſtor of BHARATA, is mentioned in the *Herivanśa*; and the conſecration of other princes, both in this and other families, is alſo mentioned in the *Herivanśa* and other works: ſuch were NRĬGA, NARA, CRĬMI, SUVRATA and `SIVI, ſons of U`SINARA; VRĬSHADARBHA, SUBÍRA, CÉCAYA, and MADRA, ſons of `SIVI †; and MUDGALA, SRĬNJAYA, VRĬHADISHU, YÁVINARA, and CRIMILÁSWA, ſons of VÁYÁSWA, and ſurnamed PANCHÁLA. The inference is denied; for there is no proof that a partition was made of their paternal kingdoms: and it is difficult to eſtabliſh the great reſpect ſhown by LACSHMANA and the other *brothers of* RAMA, by BHÍMA and other *brothers of* YUDHISHT'HIRA, by DUHSÁSANA and other *brothers of* DURYÓDHANA, and by *all* others *ſimilarly circumſtanced*. If BHÍMA, ARJUNA, and the reſt, through reſpect alone, ſurrendered the empire to which they were entitled, why did they not yield their *common* wife DRAUPAD`I to YUDHISHT'HIRA alone?

But, in fact, a kingdom ſhould be divided among virtuous brothers, able and willing to protect it; for Sages have not inſerted kingdoms under the title of indiviſible property. It does not become men born in theſe days to imitate the conduct of RÁMA, YUDHISHT'HIRA, and others, who were endued with immeaſurable ſtrength, courage, ſelf-command, virtue and knowledge, and were attended by VASISHT'HA and other Sages. The ſpeech in

* Fifth of the lunar race.

† Deſcendants of ANU, ſon of PURU, and to whom the north was allotted by that prince. In the *Bhágavata* four ſons of U`SINARA are named: `SIVI, VARMA, `SAMI, and DACSHA.

in the *Rámáyana*, (" among all the ſons of ISHWÁCU, the firſt born is king, &c.") is adapted to diſſuade RÁMA from retirement in the foreſt; for SATRUGHNA divided and gave to his ſons the kingdom which he acquired in the foreſt of *Mad'hu*.

Let it not be objected, that, were it ſo, VASISHT'HA would be a liar: for, adverting to the fact, that the firſt born happened, in *all* previous inſtances, to be conſecrated to the empire, he mentions that fact. As it is not expreſsly declared that the ſons of U'SINARA received the paternal kingdom, ſo it is not declared that they received any other than the paternal dominions. Conſequently, there is no proof that a kingdom is indiviſible: but thoſe who are qualified to govern the realm, receive kingly power; and thoſe who have great qualifications abandon the paternal dominions and conquer other realms, but do not reaſſume the hereditary empire. The government of the realm, the protection of ſubjects, and the payment of tribute by modern princes ſubject to a paramount ſovereign, may, in this view of the ſettled uſage, be determined with little *exertion of* intellect.

We infer from a paſſage of the *Adhyátma Rámáyana**, " a ſon *who obeys not his father* is dirt," and another of the *Srí Bhágavata*, " it is thy father's command," that the ſon who refuſes his aſſent to the father's gift of chattels, ſhall be reſtrained from ſuch perverſe conduct; nor is it queſtioned but he may have ſome ſhare of the paternal effects. However, the hiſtory of kingdoms ſhows, that, to the excluſion of this ſon, one eminently endued with the virtue of juſtice, and other excellencies, is entitled to the royal authority. If the maxim, that a kingdom is indiviſible, be not deduced from collections of law, ſtill the kingdom would with difficulty be taken by all the brothers. Thus SÓMACA, deſcended from the PANCHÁLA, had a hundred ſons; and DRUPADA, ſon of PRÍSHATA, the youngeſt of thoſe ſons, is mentioned as king in the *Herivanśa:* of the reſt not even the names are recorded. In the *Rámáyana* of VÁLMÍCI, CAICÉYI thus

* Aſcribed to VYA'SA. The paſſage, to which this ſhort quotation alludes, is a ſpeech of RA'MA, in anſwer to the reproaches of CAICE'YI': " Say not ſo; I would give my life for my father; I would drink deadly poiſon; I would forſake my wife SI'TA', *or* my mother CAUSALÍ; I would relinquiſh the empire. He who, unbidden, fulfils his father's wiſh, is firſt of ſons; he who does ſo when commanded, holds a middle rank; he who, though bidden, complies not, is *vile as* dirt."

thus addreſſes MANT'HARÁ, diſtreſſed at hearing the *intended* conſecration of RÁMA:

" In RÁMA there is nothing inauſpicious, nor is
" there malevolence in his great ſoul: have no
" apprehenſions, therefore, hearing of RÁMA's
" conſecration.

2. " A hundred years after RÁMA, BHARATA ſhall
" ſurely obtain, in his turn, the kingdom of his
" anceſtors."

Here is intimated the regular ſucceſſion of brothers to the kingdom of their anceſtors, not their partition of the realm. Had ſhe ſeen, or heard of, the partition of kingdoms, ſhe would require for BHARATA a ſhare of the dominions, not regular ſucceſſion to the whole. It is evident that kingdoms in general were then indiviſible.

Immediately after the paſſage quoted, MANT'HARÁ replies:

" If RÁGHAVA * be king, his ſon, and after him an-
" other, and again another deſcendant will be
" kings."

2. " CAICÉYÍ! BHARATA will be excluded from the
" royal race. All the ſons of kings do not remain
" in obedience to the eldeſt:

3. " But, of many ſons, one only is conſecrated to
" the empire. If all were kings, it would be the
" higheſt injury:

4. " Therefore, ſpotleſs beauty, kings commit the
" affairs of government to their eldeſt ſons, or to
" others more virtuous.

5. " Doubtleſs they conſecrate to the empire the
" eldeſt *by birth or excellence*, and never commit
" the entire kingdom to his brothers."

In

* *Rághava*; general patronymick of the poſterity of RAGHU, but here reſtricted to RA'MA, as in the ſpeech of VAS'ISHT'HA to RA'MA, already quoted.

In anſwer to the ſuppoſition, that BHARATA might ſucceed after a hundred years, ſhe ſays, "if RÁGHAVA (meaning RÁMA) be king, his ſon and remoter deſcendants will ſucceed; there will be no room for the inauguration of BHARATA: conſequently thou erreſt*." By this, CAICÉYÍ's ſuppoſition is not confirmed; *on the contrary*, the title of the middle brother to ſucceed after the death of his elder brother, although he leave a ſon, which, from what CAICÉYÍ had ſaid, might have been inferred as founded on ſcripture, is refuted. "The ſucceſſion of RÁMA's poſterity will exclude BHARATA:" that is, no one of the deſcendants of BHARATA will be king. If BHARATA, obeying RÁMA, be ſupported by him like a ſon, will he ſhare the empire, or *ultimately* obtain the whole? In anſwer to this, it might be aſked, do all the ſons of kings obey the eldeſt? In fact they do not: therefore BHARATA will not long remain in obedience to RÁMA; nor will he be allowed to ſhare the empire. "Even among many ſons, one only is conſecrated;" that is, all the ſons do not ſhare the empire: how then ſhould a brother *obtain a ſhare after the eldeſt has gained poſſeſſion of the whole?* Uſage, not the ſcripture, is the ground of conſecrating one ſon only. This ſhe intimates *in the third verſe:* it would be an injury, if all were conſecrated; that is, the empire would be impaired by diviſion, or ſtrife might ariſe between the brothers, ſhould they reſide in ſeparate dominions. Therefore, "kings commit the affairs of government to the eldeſt ſon." May not the middlemoſt, or other ſon, be inaugurated? Since the eldeſt ſon, being firſt, cannot be paſſed over, his conſecration is directed; but if he be vicious, another ſon, who is virtuous, may obtain the kingdom: conſecration to empire is thus ſhown; therefore, *ſhe adds*, the eldeſt ſon of RÁMA, and not BHARATA, will obtain the empire.

It ſhould not be objected, that the ſpeech of MANT'HARÁ is intended to excite diſcord, and is no authority. Such a diſpoſition would not be excited in *the mind of* a hearer by the ſuggeſtions of a perſon ſpeaking inconſiſtently with the reaſon of the law, with expreſs ordinances, and with received uſage: it may be affirmed, that the ſpeech of MANT'HARÁ is not inconſiſtent with theſe three. It is conſiſtent with the reaſon of the law; for ſhe ſhows the argument of it: *and* it is conſiſtent with ſettled uſage;

* This gloſs is ſomewhat abridged from the original.

uſage; for VAŚISHT'HA ſubſequently declares, that, "among all the ſons of ICSHWÁCU, the firſt born "is king:" and the doubt above mentioned, whether the declaration of VAŚIHT'HA be reſtricted to the poſterity of ICSHWÁCU, is obviated by the general aſſertion of MANT'HARÁ.

It ſhould not be objected, that, were it ſo, the allotment of a divided kingdom to the two ſons of SATRUGHNA would contradict that aſſertion: and it would be inconſiſtent with an expreſs ordinance (Book V, v. CCCLXVIII); for, in the want of expreſs texts of law, partition by a father ought to be made in the ſame mode with partition among heirs. If no contradiction be apprehended, there is nothing to prevent partition: and the reaſon of the law has more authority in judicial procedure than *the letter of* expreſs ordinances. Thus MISRA ſays, "civil law is indeed founded on reaſon, not on revelation;" that is, he does not lay much ſtreſs on the *Vêda* in judicial deciſions, (for a text of the *Vêda*, on partition by a father, is preſerved by BAUDHÁYANA;) but eſtabliſhes the ſuperior authority of the reaſon of the law, in compariſon with *the letter of* expreſs ordinances.

Some explain the ſecond verſe, "all the ſons of kings do not retain life, when the eldeſt brother remains:" and they quote the remainder of MANT'HARÁ's ſpeech.

"RÁMA and LACSHMANA are cloſely united *in*
"*mutual friendſhip;* their brotherly affection, like
"*the union of* the *twin* ſons of AŚWINÌ, is known
"to the world *.

2. "RÁMA, therefore, will in nothing injure
"LACSHMANA; but, doubtleſs, he will injure
"BHARATA.

3. "Thy ſon, therefore, muſt haſten to the foreſt
"from thy mother's houſe: ſuch muſt be his fate."

"RÁMA does not regard BHARATA, as he does LACSHMANA:
"the life of thy ſon (now reſiding in his maternal grandmother's
"houſe)

* Literally, "RA'MA is cloſely united to the ſon of SUMITRA; and LACSHMANA, to the deſcendant of RAGHU;" to avoid ambiguity, the patronymicks are omitted, and the phraſe ſhortened.

"houſe) will therefore be attempted by RÁMA, when he has ob-
"tained the empire; and, to ſave his life, BHARATA muſt re-
"tire to the foreſt." This they hold to be implied by this ſpeech. But that expoſition is wrong; for it would be a vain repetition of what had been already ſaid, and would be ſpoken without cauſe.

Therefore, ſhould a father, hearing theſe inſtances from the *Puránas* and other works, commit the kingdom to his eldeſt or other virtuous ſon, the gift muſt neceſſarily be conſidered as valid, *even* according to the opinions of MISRA and others: there is no difficulty in aſſerting, that the nullity of gifts, as mentioned by them, ſuppoſes caſes other than *the gift of* a kingdom; for a different practice in reſpect of royal ſucceſſion is mentioned in the *Rámáyana*.

Should he commit the kingdom to his daughter's ſon or other *remote heir*, although his *own* ſon be void of offence, then indeed it ſhould be determined as is propoſed; but, if he make a proviſion for the ſupport of his other ſons, and give his kingdom or other landed property to one ſon, then the gift is valid according to all opinions; for his family is not *thereby* deprived of ſubſiſtence. It is not proper to aſſert that he who has power to give away the perſon of his ſon, has not power to give away immoveable property without the aſſent of his ſon.

If, making a proviſion for ſons void of offence, he give his kingdom to his daughter's ſon, or to a ſtranger, what is the rule in that caſe? The gift even of a kingdom is valid, as it is of *other* landed property; for no ſpecial prohibition, nor any ſuch uſage, is found in regard to kingdoms. But no father, who diſtinguiſhes right from wrong, would be ſo diſpoſed.

If a king paramount, viewing the inſtances of kingdoms given by a father as above mentioned, give the whole kingdom to one brother, without intending an injury *to the reſt*, he commits no offence, for he is equal to a father. But if the father die after giving away his kingdom, and the king paramount direct that it ſhould be diſpoſed of according to law; in this caſe, it does not appear conſiſtent with the reaſon of the law, that one brother ſhould take the whole, without the aſſent of the reſt.

What is the "ſubſiſtence of the family," ſpeaking of the ſons of kings? As much as each conſumes in food and apparel: not merely enough to ſupport life; for, a man retiring to the foreſt

may

may ſupport life upon leaves, roots, fruit, and the like; and the ſubſiſtence of the family, mentioned by all Sages, would be unmeaning. But, ſhould another of the king's ſons ſay, "needing as much food and as much raiment as this anointed brother, I give as much to the poor and helpleſs: theſe wants cannot be ſupplied *out of* that appanage;" his claim ſhould not be admitted by the paramount: no other, not even his father, can be equal to that *conſecrated brother*; for the law admits, *that a king is* a portion of *the divinity of* INDRA and other deities; and royalty obtains much reverence. Even *Brâhmanas* pronounce the praiſes of kings: *Brâhmanas* reverend themſelves, even in the ſight of deities; for, to them are duties committed; to them are the *Vêdas* intruſted; and to them is great favour ſhown by the ſupreme Ruler, becauſe, contemning riches, they accept a ſubſiſtence on alms alone, in ſubjection to others. Thus, in the *Srí Bhâgavata*, CRĬSHNA ſays of SANACHA and the reſt:

"SRÍ*, for whoſe momentary regard others perform auſterities, deſerts not me, (though I need her not,) becauſe I acquire merit from reſpect *ſhown* to theſe, the duſt of whoſe lotos-like feet is holy, and who inſtantly remove every foulneſs†."

Though ſome modern prieſts are, in a certain degree, leſſened by their miſconduct, ſtill great reſpect ſhould be ſhown to them, in honour of former generations; and becauſe it is ſaid *by a deity* in another *Purâna*, "a *Brâhmana*, learned or unlearned, is my body:" it is not proper that one bound to reſpect ſhould notice the faults of a perſon to whom reverence is due.

From apprehenſion of offending very great perſons, it is not *here* examined whether ſome modern princes, who are not independent in the government of their ſubjects, but merely employed in levying the revenue of the paramount, ſhould, or ſhould not, be acknowledged as kings.

XVI.

* Abundance, or proſperity, perſonified.

† According to the gloſs of SWA'MI, which it is unneceſſary to tranſlate.

XVI.

YÁJNYAWALCYA:—In diſtreſs for *the maintenance of* the family, *property* may be given away, except a wife or a ſon: but not the whole of a man's eſtate, if he have iſſue living; nor what he has promiſed to another.

What has been promiſed to one perſon in this form, "I will give it to thee," may not be given to another: but if the prior promiſe was made to a perſon not legally capable of receiving the gift, then it may be given to another; for a text (XLVII) ſhows, that there is no danger in withholding what has been promiſed to a perſon incapable of receiving. It is obſerved in the *Retnácara*, on the text quoted (XLVII), that want of religious qualification incapacitates for *the receipt of* gifts: this will hereafter be diſcuſſed.

What is the rule, if a man give to one what he has promiſed to another? MISRA ſays, every gift of what has been promiſed is invalid. This ſhould be examined; for, whence is it deduced? *It is ſaid*, from the texts of YÁJNYAWALCYA and others (XVI, &c.): but the obvious meaning of theſe texts forbids the gift, as it does the donation of a wife, a ſon, and ſo forth: and MISRA himſelf ſays, that civil law is founded on reaſon; in proof of which the text of VRÍHASPATI is quoted:

XVII.

VRÍHASPATI:—A deciſion muſt not be made ſolely by having recourſe to the letter of written codes: ſince, if no deciſion were made according to the reaſon-of-the-law*, there might be a failure of juſtice.

And here, effects voluntarily promiſed by the owner not *immediately*

* *Or according to immemorial uſage*; for the word *Yuckti* admits both ſenſes.

mediately becoming the property of another, the reaſon of the law is not applicable.

Should it not be eſtabliſhed, that there is no independence in regard to what has been promiſed; and thus the gift is null, becauſe it is made by a perſon who is not uncontrolled? No; for, in that inſtance, want of independence is not proved: the obvious ſenſe of the texts of YÁJNYAWALCYA and others *merely* forbids the gift; and, in the title of void gifts, want of independence denotes want of ownerſhip.

It is argued, that, from the term "not his own maſter," in the title of void gifts, it is not underſtood that he is not owner; but wherever the term "want of independence" is technically employed, every gift by ſuch a perſon, who is not owner of the chattel, is void; for the text of MENU and YAMA declares null ſuch a gift or ſale *made by any other than the true owner* (Chap. II, v. XXVII); and ſold is employed in the text of NÁREDA (Chap. II, v. XXVI) in the comprehenſive ſenſe of given, or otherwiſe aliened. Even a gift of his *own* paternal eſtate, by a pupil reſiding in the family of his teacher, may be void; or, if his want of independence in regard to his patrimony be not admitted, and a gift or alienation of wealth acquired by himſelf, or otherwiſe, be then made, by a ſon whoſe father is living, without the aſſent of the father or other *ſuperior*, ſome part of MISRA's opinion ſhould be admitted, though contrary to the opinion of JÍMÚTAVÁHANA: and as for what has been ſaid, that want of independence, in reſpect of what has been promiſed, is not proved; *even* that is not eſtabliſhed by the texts of YÁJNYAWALCYA and others: thus, if he be independent, how ſhould he be fined? The amercement for a gift of what has been promiſed to another, proves his want of independence; it is not conſiſtent with common ſenſe, that a man ſhould be fined who gives that in reſpect of which he is uncontrolled: neither his want of ownerſhip, underſtood from the term "want of independence," but ſubjection to another; and, in the dictionary of AMERA, independent, or his own maſter, is oppoſed to dependent, or ſubject to another: in like manner, a gift of female property by a wife, without the aſſent of her huſband, is not valid; but the gift of female property by a wife, on a general permiſſion to give *preſents*, is valid; it is not required that the number or quantity be

ſpecified: but, for a gift of her huſband's property, it is requiſite that the number or quantity be ſpecified in this form, "give ſo much wealth:" this diſtinction does exiſt; yet the term "excluſive dominion" is applied to female wealth; or the woman has excluſive dominion, as declared by the text, "the abſolute excluſive dominion of women over nuptial gifts is perpetually celebrated:" and the ſame law is applicable even to other perſons, who are technically deſcribed as "ſubject to control."

All this argument is contradicted, for even MISRA does not proceed to ſo great a length in regard to the ſeparate property of a woman; and gifts of their own effects by ſubjects without the aſſent of the king, and by younger brothers without the aſſent of the eldeſt brother, are ſeen in hundreds of inſtances.

+ Therefore, ſhould a man give to one what he has promiſed to another, the laſt donee ſhall obtain the effects; but the king ſhall impoſe an amercement on the donor. It is not, however, expreſsly ordained, that an equivalent ſhall be given to the perſon to whom the promiſe was made. If the firſt promiſe be made for civil purpoſes, and the thing be afterwards given for religious uſes, what is the law in that caſe? The anſwer is, NAREDA, premiſing gifts for civil purpoſes (II 2), and declaring unalienable what has been promiſed to another (IV 2), merely forbids the giving, for ſuch purpoſes, what has been promiſed to another: it follows, that there is no offence in ſuch a gift for religious uſes, and that the gift is valid. But, in fact, ſhould a man fraudulently give, for religious purpoſes, what has been promiſed to another, although he have other effects proper to be given, and do not ſatisfy the perſon to whom the promiſe was made, it is conſiſtent with common ſenſe that he ſhould be amerced. This will be further examined in another place.

SECT.

SECT. II.—*On Alienable Property, and on Valid or Irrevocable, and Invalid or Void Gifts.*

ART. I.—*On Alienable Property.*

XVIII.

VRĬHASPATI:—A man may give what remains after the food and clothing of his family: the giver of more, *who leaves his family naked and unfed,* may taſte honey at firſt, but ſhall afterwards find it poiſon.

2. Of houſes and of land, acquired by any of the ſeven modes of acquiſition, whatever is given away, ſhould be delivered, diſtinguiſhing *land* as *it was* left by the father, or gained by the occupier himſelf:

3. At his pleaſure he may give what himſelf acquired; a pledge muſt be diſpoſed of by the law of pledges, *or ſubject to redemption;* but of property acquired by marriage, or inherited from anceſtors, not every gift ſubſiſts*.

4. *But* if what is acquired by marriage, what has deſcended from an anceſtor, or what has been gained by valour, be given with the aſſent of the wife, of the coheirs, or of the king, the gift has validity.

5. Heirs have a lien equally on the immoveable heritage, whether they be divided or undivided; and a ſingle parcener has no power to give, pledge, or ſell the whole.

* According to another interpretation, "the whole ought not to be aliened."

The laſt text is attributed to VYÁSA by JÍMÚTAVÁHANA; and *herein* RAGHUNANDANA follows him. What exceeds the food and clothing required by the members of the family, who are entitled to maintenance as above mentioned, may be given away. Otherwiſe, the family wanting food and clothing *in conſequence of more being given*, the donor's conduct is not virtuous.

"There is ſin in the gift of what does not exceed, and virtue in the gift of what does exceed, *the proper food and clothing of the family*." MISRA.

It is intimated, that what does not exceed the maintenance of the family, ſhould not be given away, even for religious purpoſes; but it is alſo intimated, that the gift of what ſhould be appropriated to the food and clothing of the family, is valid. "The giver of more may taſte honey at firſt:" by this it is intimated, that bliſs is at firſt obtained; thence it follows, that the religious purpoſe is accompliſhed; and that purpoſe cannot be accompliſhed unleſs the gift be valid: therefore the gift appears to be valid.

In the *Smṛitiſára* the validity of the donation is admitted: "a man's own gift is valid, becauſe he has property, which is the eſtabliſhed cauſe *of validity*." But it is not admitted that the religious purpoſe is attained; for he has not obſerved the commands of the law.

Some hold, ſince the text directs that a man ſhould give what remains after feeding and clothing his family, and ſince it is not applied as an exception to the gift of more, therefore his duty is not fulfilled if he give not what exceeds the food and clothing of his family. But this does not ſeem proper; for the text relates to civil affairs, and it is irregular to ground on it a rule for *religious* gifts. A cauſe of failure in religious merit does not eſtabliſh demerit. Thus, the bathing in the Ganges being accidentally accompliſhed, in neglect of advice not to go that way to the Ganges, by which was implied the danger of meeting tigers or the like, the religious purpoſe is *nevertheleſs* obtained: but it is not obtained by the gift of property belonging to another owner; for this is not a gift in the form of a relinquiſhment, veſting property in another after deveſting his own.

According to the opinion of thoſe who maintain the invalidity of the gift, the religious purpoſe is not obtained. But the expreſſion

preſſion " the giver may taſte honey at firſt," is not taken literally. His conduct in delivering his whole eſtate into the hands of another may at firſt ſavour like honey, by affording miſtaken pleaſure, or cauſing preſent ſatisfaction; but afterwards it becomes poiſon, becauſe it is puniſhed in a region of torment. There is no difficulty in conſidering this as relating to civil gifts. But it may be applied indiſcriminately to religious merit: otherwiſe, the gift or ſale being ſinful, but religious merit cancelling the ſin, or himſelf not being born again, the religious merit of the donor would be inconſiſtent with his " afterwards finding it poiſon."

According to the opinion of MISRA, this text may imply the invalidity of a gift, where a man's whole eſtate is given; and, according to the opinion of JÍMÚTAVÁHANA, it may imply that the gift is valid.

XIX.

CÁTYÁYANA declares what may and may not be given:—Except his whole eſtate and his dwelling-houſe, what remains after the food and clothing of his family, a man may give away, whatever it be, *whether fixed or moveable;* otherwiſe it may not be given.

" His dwelling-houſe;" one houſe, without which he himſelf, or his family, might want a dwelling. It is meant generally, comprehending a pond ſupplying water for common uſe and the like.

Is not the exceſs above the ſubſiſtence of the family unmeaning, after excepting the whole of his eſtate? It ſhould not be ſaid, a gift of his whole eſtate might be made with a reſervation of a ſingle ſhell only. Were it ſo, his whole eſtate would be *an* unmeaning *exception*. Nor ſhould it be ſaid, the gift of the whole eſtate is excepted to prevent the poſſible gift of his whole eſtate by a man able to maintain his family on alms; for there is no authority for ſuch an inference. It is not eſtabliſhed, that a man able to ſubſiſt his family on alms, or the like, may not give

away his whole eſtate: for it is the meaning of the ordinance, that the family ſhould be any-how ſupported.

Some obſerve, that a man, though able to maintain his family on alms or the like, ought not to give away his whole eſtate; for, ſhould alms or other means at any time fail, his family might be diſtreſſed. Still, what can be underſtood from the expreſſion his "whole eſtate?" The whole eſtate ſhould be underſtood in the mode already mentioned; that is, the whole of his effects, including what is required for the maintenance of the family until other property be gained. Such a meaning is deduced from the ſequel, "what remains after the food and clothing of his family." Or the exceſs above the maintenance of the family is expreſsly declared, *to provide* againſt the attempt of giving away even a trifle, when the family is but ill maintained out of the whole eſtate. Conſequently, the gift even of a trifle, if it be not an exceſs above the ſubſiſtence of the family, is forbidden. Or the text may be read, "*ſarvaſwam gṛĭha varjitam*," inſtead of "*ſarvaſwa gṛĭha varjantu*." Conſequently the whole of his own property (except his dwelling-houſe) that remains after the food and clothing of his family, a man may give away; ſuch will be the ſenſe *of the text*. "The whole" is there mentioned to ſhow that moveables and immoveables are not diſtinguiſhed. "His own;" by this term, depoſits and the like are excepted: the ſenſe is, his own ſeveral property; by which joint-property is alſo excepted. In concurrence with other Sages, a diſtinction muſt be underſtood in reſpect of a thing promiſed, a wife, or a ſon. Here the condition *expreſſed* in the text concerning alienable property, that it muſt exceed the ſubſiſtence of the family, *ſhows*, that the gift of what does not exceed the ſubſiſtence of the family is not valid; and the declaration, that joint-property may not be given, *ſhows*, that the gift of ſeveral property is valid. As in the command for performing a *'sraddha* at the conjunction, it appears, from the authority of the prohibition againſt performing a *'sraddha* at night, that the *'sraddha* or obſequies ſhould be performed at the conjunction, but not at night; and that no benefit ariſes from a *'sráddha* performed at night: ſo they hold MISRA'S meaning to be ſimilar.

Where the benefit *of an act* is deduced from the *Vēda* alone, the means of obtaining that benefit are eſtabliſhed in conformity with

with the rule commanding a time different from night; and the benefit is not obtained unleſs a time other than night be taken: for there is no ordinance ſhowing benefit from a *śrâddha* performed without obſerving that diſtinction. But here the obligation of making gifts is deduced from the *Véda;* and a ſufficient cauſe of property in the donee is found in the fact *of the gift*; but property cannot veſt in another perſon, unleſs previous property be annulled: therefore, that being eſtabliſhed, *the transfer of property* is eſtabliſhed on the intention of the donor to make a gift. By logical inference, gift being ſufficient cauſe of annulling previous property, exceſs above the ſubſiſtence of the family cannot be *made* a condition by words alone, for perception ariſes from words and logical inference jointly; and it is difficult *to eſtabliſh another opinion*. Such are the ſentiments of thoſe who follow the opinion of JÍMÚTAVÁHANA.

"By the ſeven modes of acquiſition" (XIX 2). The modes of acquiring wealth are declared by MENU.

XX.

MENU:—There are ſeven virtuous means of acquiring property; ſucceſſion, occupancy or donation, and purchaſe or exchange, conqueſt, lending at intereſt, huſbandry or commerce, and acceptance of preſents from reſpectable men.

The cauſes of gaining wealth *are theſe*. "Succeſſion," or inheritance of property, as the term is explained in the *Vivâda Retnácara* and *Vivâda Chintámeni;* that is, property received in right of affinity and relation. "Occupancy," or gain; the finding of a waif or the like. "Conqueſt," explained in the *Retnácara*, victory over an enemy in battle. Conſequently, what is gained by ſucceſs in gaming, or the like, is excepted; it is a diſhoneſt acquiſition, for it partakes of the quality of darkneſs. The very ſame opinion is intimated in the *Chintámeni*.

Three, ſucceſſion, occupancy, and purchaſe, are allowed to all claſſes; conqueſt is peculiar to the military tribe; lending at intereſt, and huſbandry or commerce, belong to the mercantile pro-

ſeſſion ; and acceptance of preſents from reſpectable men, to the ſacerdotal claſs. Theſe are virtuous means of acquiring property : but, on failure of theſe, prieſts and the reſt may ſubſiſt by other means allowed in times void of diſtreſs, ſuch as huſbandry and the like ; or on failure of theſe, by the beſt modes allowed in times of diſtreſs. CULLÚCABHATTA.

XXI.

MENU :—Learning, art, work for wages, menial ſervice, attendance on cattle, traffick, agriculture, content with little, alms, and receiving high intereſt on money, are ten modes of ſubſiſtence.

In the *commentator's* gloſs, which follows the text above quoted, declaring theſe to be the modes of ſubſiſtence in times of diſtreſs, *he ſhows that* each of theſe modes of ſubſiſtence may be followed in times of diſtreſs by the perſon to whom it is forbidden in other circumſtances : as work for wages, menial ſervice, and the like, by a man of the ſacerdotal claſs ; and ſo of arts and the reſt. "Learning," (except that contained in the ſcriptures,) as medicine, philoſophy, *charms* counteracting poiſon and the like, practiſed for ſubſiſtence by all claſſes in times of diſtreſs, is no offence. "Art," as painting and the like. "Content with little ;" for with content a man may ſubſiſt on his own, however little. "Receiving high intereſt on money ;" lending on intereſt even in perſon, and ſo forth. By theſe ten modes a man may ſubſiſt in times of diſtreſs. Conſequently a prieſt in *great* diſtreſs may depend even on menial ſervice, arts, or the like, for his ſubſiſtence. Such is CULLÚCABHATTA's interpretation: but others argue, that, after declaring, in the firſt text (XX), the modes of ſubſiſtence in times void of diſtreſs, this text (XXI) intends the modes of ſubſiſtence in times of diſtreſs, implying the preſervation of life *only*. That, however, in its conſequences, coincides *with the opinion of* CULLUCABHATTA.

But others *again* hold, that the practice of *Vaiſyas* is allowed, by the following text, to a *Bráhmana* in times of diſtreſs ; but is on no account *allowed* in other ſeaſons : for, aſſiſting to ſacrifice, teaching

teaching the *Védas*, and receiving gifts and ſo forth, are declared to be the means of ſubſiſtence for a *Bráhmana*.

XXII.

MENU :—But a *Bráhmana*, unable to get a ſubſiſtence by either of thoſe employments, *(his duties juſt mentioned, or the duty of a ſoldier,)* or a *Cſhatriya, unable to ſubſiſt by his own occupations*, may ſubſiſt as a mercantile man, applying himſelf *in perſon* to tillage and attendance on cattle*.

And here it is irregular to give ſuch an interpretation to this text (XXI); for it is declared, that the modes of ſubſiſtence delivered in the tenth chapter are legal in times of diſtreſs: "Such as have been fully declared, are the ſeveral duties of the four claſſes in diſtreſs for ſubſiſtence:" and the virtuous modes of ſubſiſtence for a *Bráhmana* in ſuch circumſtances, are declared in the text *firſt quoted* (XX); ſince the modes of ſubſiſtence for a prieſt alone are declared, beginning with the text, "Should a *Bráhmana* afflicted and pining through want of food chooſe rather to remain fixed in the path of his own duty, than to adopt the practice of *Vaiſyas*, let him act in this manner," and ending with this text (XX). Immediately after it, the modes of ſubſiſtence for a *Cſhátriya* in diſtreſs are delivered in the text quoted (XXI); and, next to that, a diſtinction is declared in regard to intereſt on loans, which both texts permit the *Bráhmana* and the *Cſhatriya* to receive.

XXIII.

MENU :—Neither a prieſt, nor a military man, ſhould receive intereſt on loans: but each of them, if he pleaſe,

* See MENU, Chap. x, V. 80. In quoting the text, the compiler has omitted the queſtion, and inſerted the words "but a *Bráhmana* or a *Cſhatriya*:" on this reading, it has been neceſſary to interpolate the text, becauſe both employments are not allowed to the *Cſhatriya*. T.

pleaſe, may pay ſmall intereſt, for ſome pious uſe, to the ſinful man who demands it.

Immediately after this text, the proper ſubſiſtence of a *Cſhatriya*, in times of diſtreſs, is particularly mentioned; as the proper ſubſiſtence for the *Brâhmana*, in ſuch ſeaſons, is mentioned in the texts, "Should a *Brâhmana*, afflicted and pining through want of food, &c." But in all theſe texts a *Vaiſya* is not even named; and a *Súdra* is ſubſequently noticed: how then can the text, "there are ſeven virtuous means, &c." (XX) relate to the four claſſes? The anſwer is, YÁJNYAWALCYA has in many places delivered a text applicable to the *Cſhatriya*, and ſimilarly deſcribing ten modes of ſubſiſtence.

XXIV.

YÁJNYAWALCYA: — Agriculture, art, work for wages, ſcience, receiving high intereſt on money, *the uſe of a* carriage, *retirement in* mountains, ſervice of kings, *the office of* king, and alms, are modes of ſubſiſtence in times of diſtreſs.

Before this he declares the ſubſiſtence of a *Brâhmana* in times of diſtreſs.

XXV.

YÁJNYAWALCYA:—A prieſt, *when* oppreſſed by calamity, eating food received from any man whomſoever, is not tainted by ſin; for he is equal to the igneous ſun.

Therefore the text, "There are ſeven virtuous means of acquiring property" (XX), deſcribes the virtuous means of ſubſiſtence for a *Brâhmana* in times of diſtreſs; and the text, "Science, art, &c." (XXI), deſcribes the virtuous means of ſubſiſtence for a *Cſhatriya* in ſuch circumſtances: and there is no

vain

vain repetition in *twice mentioning* lending at intereſt, and huſbandry or commerce, explained by CHANDÉSWARA, VÁCHESPATI, MISRA and CULLÚCABHATTA, receiving high intereſt on money, and agriculture or traffick.

It ſhould not be objected, that conqueſt and the like cannot be virtuous means of acquiſition for a *Brāhmana:* for MENU declares, that the higheſt beatitude may be attained by *Brāhmanas* practiſing, in times of diſtreſs, the duties propounded for *Cſhatriyas* and the reſt.

XXVI.

MENU:—Such as have been fully declared are the ſeveral duties of the four claſſes in diſtreſs for ſubſiſtence; and if they perform them exactly, they ſhall attain the higheſt beatitude.

This opinion ſhould be well examined.

It ſeems to be declared by the text of VRĬHASPATI (XVIII 2), that property partaking of the qualities of paſſion and darkneſs is unalienable. CHANDÉSWARA makes no remark on this point. But MISRA ſays, "the expreſſion is comprehenſive: he may aliene, at his own pleaſure, his own ſeveral property any-how poſſeſſed; but property, *held* in coparcenary with another, cannot be aliened without the conſent of the coparcener." MISRA's meaning is, that the words of VRĬHASPATI, *who was* profoundly verſed in the law, intend property legally acquired, and do except any *ſeveral* property from unalienable things, but do not except from alienation property acquired by other than thoſe ſeven means.

As for the diſtinction declared by NÁREDA in regard to property partaking of *the qualities of* truth, paſſion and darkneſs, the ranking of uſury and the like under the quality of darkneſs is pertinent, as it relates to *Brāhmanas* and the reſt in times void of diſtreſs.

XXVII.

NÁREDA:—*What is* acquired by *teaching* the *Védas*, by

by courage, or devotion; *what is received* with a damſel, from a pupil, or for a ſacrifice; and *what is* obtained by inheritance, are celebrated by Sages as the ſeven-fold *diſtinction of* pure-property.

2. What is gained by uſury, agriculture and traffick, or *received* as tolls, or as wages for ſinging, or *as a return* for a benefit conferred, is conſidered as property partaking of the quality of paſſion.

3. What is acquired by ſervile attendance, by gaming, by robbery, by *inflicting* pain, by diſguiſe, by larceny, and by fraud, is conſidered as partaking of the quality of darkneſs.

Whatever *ſeveral* property, acquired by any of theſe modes, is given away, even that was alienable; and the ſame ſhould be obſerved of property acquired by art and the like (XXI), and ſo in other caſes. Such exactly is MISRA's meaning.

"Houſes and land, acquired by any of the ſeven modes of acquiſition" (XVIII 2), is an expreſſion uſed comprehenſively. In the caſe of other moveable or immoveable property, if land, a houſe, or the like, be given away, it ſhould not be reſumed: this the Sage intends to expreſs. Conſequently, ſhould chattels depoſited, or the like, be given away, the gift ſhould be retracted. Such is the whole meaning. "As it was left by the father or gained by the occupier himſelf," is ſubjoined to limit the rule; and is elucidated by the next verſe (XVIII 3). Such is the conſiſtent method of authors.

But others explain acquiſition, the means by which wealth is gained; intending property acquired by the means deſcribed in texts which ſhow virtuous and other modes, ſuch as purchaſe and the like. Thoſe ſeveral means, in which an act of the receiver is requiſite for the acquiſition, muſt be conſidered as the ſeven modes: and one is included in another; as robbery, larceny, the buſineſs of uſury, and ſo forth. Conſequently the number of ſeven is not contradicted. Left by the father ſignifies inheritance only; and gained by the occupier denotes the receipt of gifts and the like; it is meant of caſes where no act of the receiver

ceiver in expectation of gain is neceſſary to the acquiſition: and property partaking of the qualities of paſſion or darkneſs, is, without difficulty, comprehended in the text.

A diſtinction is propounded (XVIII 3) relative to property acquired by the occupier himſelf, which the former text had declared alienable. What is acquired by a donee, without relation to another, may be given at his pleaſure, even without the aſſent of ſons, brothers, and the reſt: and the diſtinction is derived from the text quoted by JÍMÚTAVAHÁNA (XIV). Immoveable property, as land or the like, and a corrody in the form of a fixed allowance, payable by the king or other perſon, and bipeds or ſlaves and the reſt, a man ſhall neither give away nor ſell, even though he acquired them himſelf, without the conſent of all his ſons. Such is the ſenſe *of the text* (XIV).

Is a bird unalienable or not? Since it appears from the word "biped," that even a bird may not be given without *the* aſſent *of heirs*, ſhould it not be *held* unalienable? No; for, VRÍHASPATI ſhows that a deciſion inconſiſtent with the reaſon of the law muſt be avoided (XVII). On immoveable property, ſuch as land or corrodies, children may be long ſubſiſted. As it cauſes unlimited production of wealth, it is called an eſtate, or *funds of ſupport*: the loſs of it is pronounced diſhonourable in a text of NÁREDA (XII); and the gift of it, without the aſſent of ſons and others uſing the eſtate, is called loſs in *this* text. Now a ſlave is ſuch; for, by agriculture or the like he is able to gain much wealth for his maſter. It ſhould not be objected, that great riches may be acquired even by receiving high intereſt on gold or the like. Though *gold*, lent at a high rate of intereſt, may be equal to immoveable property, *affording wealth* like the alchymiſt's ſtone, or like the gem which daily produces gold, yet, if it be not lent at intereſt, there is nothing to prevent alienation. Or it may be underſtood, that if a contract be made for intereſt, *then gold or the like*, producing wealth by means of that contract, ſhould not be given away. If that be the caſe, may not wealth be acquired, in ſome inſtances, even by means of birds; for example, by the advanced price on birds well taught? This ſhould not be granted: were it ſo, the ſame might be extended even to quadrupeds, ſuch as ſheep and the like, and bulls or other animals employed in huſbandry. If it be argued, that land, a corrody,

rody, or the like, may be underſtood to be declared in the text by the word "immoveable;" and ſlave, bird, or the like, by the word "biped:" (for it is a rule not to ſtrain a text; and when the literal ſenſe of the terms ſuffices, there is no occaſion for recurring to the reaſon of the law; and the text of VRĬHASPATI *therefore* is not applicable in this inſtance:) the anſwer is, diſſimilar rules in reſpect of birds and ſheep, entitled to equal conſideration, would be inconſiſtent with common ſenſe. *Men of* ſome mixed claſſes ſubſiſt by the exhibition of ſnakes; ſhould they give one away without the conſent of their ſons, it would appear to be a loſs of the eſtate: yet a ſnake is not a biped. Since the ſons and the reſt *of the family* might be maintained, even after giving away a ſnake, by catching another, may it not be ſaid that there is no loſs of eſtate? The ſame might be alleged in regard to a gift of land by *Bráhmanas* and others. As land is dependent on the king, may not the ſons and others recover it, and thus be exempt from difficulties? Be it any-how in this inſtance; but thoſe who ſubſiſt by the exhibition of apes may fail in catching another, and *thus* be reduced to difficulties, for by labour muſt this end be attained; and it cannot be accompliſhed without much toil in the diſplay of ſcience, *and exertion of art*. On this ſubject it is ſaid, whatever mode of ſubſiſtence long maintains perſons of a *particular* claſs, even that is their real eſtate, *and* is intended by the word "immoveable;" biped literally ſignifies a bird, a man, &c. and theſe may not be given without the conſent of *the donor's* ſons. This finally is the ſenſe.

It is argued that particular birds, being valuable bipeds, and ſlaves, being endued with excellent qualities and the like, may not be aliened without the conſent of ſons. It ſhould not be objected, that a thing *ſold* for any price may be valuable. Whatever bears a greater price, compared with other things of the ſame nature, is coſtly. Nor ſhould it be objected; in compariſon with what muſt it bear a higher price? If it be ſaid, in compariſon with any bird; then, even what does not commonly bear a great price, may be dear in compariſon with a bird accidentally ſold for a leſs ſum: and thus, that *only* is cheap, in compariſon with which no bird has borne a leſs price; and all others are dear: and, ſince low-priced birds may be ſcarce, or all may be valuable, ſuch great refinement would be fruitleſs. A very

high price may be diſtinguiſhed, with the king's conſent, by compariſon with the coſt of birds accepted by perſons in general; and ſo in other caſes. This expoſition may be queſtioned; for, great value is not implied, by the reaſon of the law, in declaring immoveable property and the like to be unalienable. Thus it is not conſiſtent with approved uſage, that, by a compariſon with land meaſuring twenty cubits, deemed valuable in compariſon with the quantity of a *pala* of gold, land meaſuring a ſingle cubit ſhould be aliened at the pleaſure of the occupier alone. This and other points may be diſcuſſed in many ways.

"A pledge muſt be diſpoſed of by the law of pledges" (XVIII 3). As his own intereſt *in the pledge*, ſuch ſhould he make another's. The *Retnácara*.

The meaning is this: any man pawning a chattel, receives a loan from ſome perſon; if the creditor give that pledge to *another* perſon, then the gift of the pawn is the ſame with a gift of the debt: therefore, as the debtor paying his debt to his creditor might redeem the chattel, ſo, in this inſtance, paying the debt to the donee he recovers the chattel. It is mentioned to make it evident that a debt *demandable* may be given away or ſold. In fact it is included in what may be given at pleaſure. Conſequently, if a pledge be received for a loan of paternal wealth, it is ſubject to the law concerning patrimony; but if it be received for a loan of what was acquired by the man himſelf, it is ſubject to the ſame law with his own acquired property. Thus ſome expound the law. MISRA explains this clearly. The form *of transferring a pledge* is ſubjoined, "this thing was pledged to me, and is given by me to thee; it muſt be reſtored by thee to the owner, on receiving the amount for which it was pledged."

But others hold, that, in the caſe above mentioned, when a debtor gives to any perſon a chattel which is in pawn, then the donee may obtain that chattel after payment of the debt: that is, as the debtor had an intereſt, or reſtricted property, in the thing pawned, ſo has the donee; and after the death of the donor, on failure of his ſons or other ſucceſſors to his eſtate, ſhould the creditor or his iſſue be living, the donee, wiſhing to obtain the pledge, may receive it on payment of the debt. This in effect follows from what has been ſaid; for, unleſs payment of the debt be the condition, there would be no reſtriction to property in the pledge: and

and RAGHUNANDANA obſerves, in the *Dáyabhága tatwa*, that, "if the pawn remain unredeemed on the death of the ſeller or donor, then, ſince a property ſimilar to that of the contracting party has been veſted by ſale or gift, the buyer or donee ſhould redeem the pawn." Here, if the chattel pledged belong to the paternal eſtate, it is ſubject to the law reſpecting patrimony; but if it were acquired by the man himſelf, it is ſubject to the law concerning ſuch property.

In theſe two opinions a mutual contradiction ariſes; that is, after a gift or ſale of a pledge by a fraudulent debtor, on his death, and on failure of ſons or other heirs, the payment of the debt by the donee or purchaſer *according to one opinion*, or non-payment of it *according to another*, is *in either caſe* an *unjuſt* diſparity. The queſtion may be thus diſcuſſed: in regard to the donee, be it as it may be; but a purchaſer, having paid a fair price, would ſuffer great loſs if he muſt again pay the debt with intereſt, which would be inconſiſtent with common ſenſe: therefore he may obtain the pledge without payment of the debt; and ſuch a rule being equitable in the caſe of a purchaſe, the ſame may be eſtabliſhed in the caſe of donation. It ſhould not be objected, that the loſs falling on the creditor, who advanced his own money, and long preſerved another's chattel, would be inconſiſtent with common ſenſe: a ſimilar loſs falls on the creditor, after the death of the debtor, if the pledge have been deſtroyed by the act of GOD or the king, or by the fault of the debtor. Nor ſhould it be objected, that, where a thing already transferred to another is ſold, the loſs falls on the purchaſer: the debtor has not transferred the thing *to his creditor*. Nor ſhould it be objected, that, in this inſtance, the pledge is not deſtroyed by the act of GOD or the king: the ſale of the pledge is a fault on the part of the debtor, *by which the pledge may be loſt to the creditor*.

XXVIII.

Smriti, quoted by CHANDÉSWARA and RAGHUNANDANA:—If a man, having bailed or pledged a thing to one perſon, pledge or ſell it to another, the laſt act ſhall prevail.

Otherwiſe,

Otherwiſe, ſince the mortgage is cancelled by the redemption of it, there may be no obſtacle to a valid gift or ſale, even though a mortgage prevail. It ſhould not be objected, that, ſuppoſing it to prevail, ſhould a gift or ſale be made after it, that contract would not be valid, even though the pledge be ſubſequently redeemed; for it is reſiſted by the mortgage, which was in full force when the gift or ſale was made: but now, ſuch a contract, made while a mortgage ſubſiſts, is valid, and the donee or buyer may diſpoſe of the thing at pleaſure, when it has been redeemed; and thus ſhould the force of donation or ſale be admitted. Then it would be proper to ſay, that, both being good in law, both have equal force. As a depoſitary cannot withhold from the purchaſer a chattel, which had been bailed to him to be kept ten months, and which is afterwards ſold within that period, ſo a mortgage is cancelled by the *ſuperior* force of a ſale: therefore the purchaſer can take the chattel from the creditor; and the debt remains unſecured by a pledge. But if the purchaſer bought the chattel, knowing it *to be mortgaged*, he muſt neceſſarily be puniſhed by the king; elſe, from the ſtate of the times, eſtabliſhed uſage in regard to loans would be now infringed by the audacity of knaves. Contracts of ſale, mortgage, and the like, muſt neceſſarily be made in the preſence of the king's officers, and ſhould be recorded by them. Yet if they were not preſent, but another perſon, who was by, prove the contract, the predominance of a ſale, where mortgage is oppoſed to it, is declared by RAGHUNANDANA himſelf: "what has *ſuperior* force, even that is good in law." But here mortgage reſiſts the owner's *power of* diſpoſing of his effects at pleaſure, and is not preceded by the annulling of property: and therefore, whether prior or ſubſequent, it is ſuperſeded by donation or purchaſe, which are preceded by the annulling of the former owner's property, and have *ſuperior* force. By the word "even," in the phraſe "even that is good in law," the invalidity of a weaker contract is intimated: and here the mortgage, as a weaker contract, being invalid, what ſhould prevent the purchaſer obtaining poſſeſſion of that which is now become his own?

If it be ſaid, ſince the expreſſion 'mortgage reſiſts the owner's power of diſpoſing of his effects at pleaſure,' intimates an oppoſition to gift, ſale, conſumption, and many other modes of diſpoſal; therefore a ſale, though valid while a mortgage ſubſiſts,

does not authorize the purchaſer, now *become* owner, to diſpoſe of the thing at pleaſure: it is anſwered, the ſale would not then be valid. Nor is this apprehended by RAGHUNANDANA; for it would diſagree with prior and ſubſequent works *of the ſame author*: therefore, oppoſition to diſpoſal at pleaſure is *effected by* reſtraining a debtor, who attempts ſuch an act, by means of the king's officers; not by preventing a purchaſer, who is not liable for the debt, from diſpoſing of the thing at pleaſure. But the purchaſer ſhould ſee the thing, and *have reaſon to* ſuppoſe it is not pledged to any man when he pays a price *for it*, elſe he is puniſhable; ſuch is the induction of common ſenſe: and he ſhould obtain immediate poſſeſſion; for the ſale may become void through want of poſſeſſion during a long ſpace of time, and the mortgage would then be *excluſively* valid.

In this inſtance, the creditor obtains another pledge from the debtor; or the debt ſhould be immediately diſcharged. If the debtor die, the creditor may receive it from his ſon or grandſon, or he may recover it from any other property whatever left by the debtor: he cannot withhold that pledge from the purchaſer; for no ordinance *permits it*.

RAGHUNANDANA remarks on the text above quoted (XXVIII), that the word 'ſell' *alſo* denotes gift annulling property. Conſequently gift, ſale, barter, and all other *contracts* deveſting property are intended.

The moderns hold, that if a man ſell a valuable pledge for leſs than its worth, *that is*, leſs by the amount which is applicable to the redemption of the pledge, and with an agreement in this form, "on redeeming the pledge, thou ſhalt have it;" or if he make a gift or other alienation, with the ſame ſtipulation; then the pledge ſhould be redeemed by the purchaſer or donee, in conformity with the text of YÁJNYAWALCYA (Chapter II, v. XXVIII). But in regard to pledges, ſince the owner's property ſubſiſts, it appears that there is a diſtinction. Thus, where two contracts of *gift and* acceptance occur, ſince the property of the former owner is deveſted by the firſt donation, the gift laſt made by him is not valid, for it is made without ownerſhip; and ſo in regard to ſale. But this is actually the foundation of validity in the gift or ſale of a thing bailed or pledged, as *declared* in the text *lately quoted* (XXVIII): therefore, ſhould the

the ſame thing be hypothecated to two creditors, the validity of the laſt mortgage cannot be reverſed, for it is made by the owner; and the validity of the former hypothecation being admitted, becauſe it was alſo made by the owner, they may be equally good; but the firſt has not ſuperior force, ſince a deciſion inconſiſtent with the reaſon of the law is forbidden by VRĬHASPATI (XVII). Therefore, even in a contract of mortgage, ſome diſtinction reſpecting the property in the effects muſt neceſſarily be admitted, under the authority of which even the purchaſer of thoſe effects may not diſpoſe of them at pleaſure before the mortgage is redeemed. Such is the ſentiment of RAGHUNANDANA.

What is the diſtinction? Not a ſpecifick difference inherent in property: for ſuch a difference cannot be therein admitted, fluctuating with the variations of time; ſince ſpecifick difference conſtitutes permanent ſpecies, and ſpecies is not regulated by time, produced with the production of ſubſtance, and deſtroyed with its deſtruction. Nor can another property ariſe therein; for there is a want of the requiſites *to conſtitute a title*. Let it not be argued that the diſtinction is individual, becauſe the *Mímánſacas* do not acknowledge genus and ſpecies ſeparate from ſubſtance. There is no proof of ſuch individual diſtinction.

It is ſaid, the intention *of the parties* conſtitutes the diſtinction. Thus, when a thing is pledged, the debtor intends, and expreſſes in words, "let this chattel, belonging to me, remain with him; until the period expire, it ſhall not be enjoyed by me or my relations:" and therefore, by virtue of that *declared* intention, even a purchaſer, like the debtor's heir, is debarred from the enjoyment of that chattel. *Thus* eſtabliſhed uſage in regard to loan and payment would not be infringed. Otherwiſe, no man would make a loan, apprehending that the debtor would ſell to another what he pledged to him.

If it be ſaid, as a bailment, made by the owner for a ſpecifick period of ten months, is cancelled by a ſubſequent contract of ſale; and ſetting aſide the former owner's intention, (that it ſhould remain with the depoſitary to the end of ten months,) it muſt be delivered at the will of the preſent owner: ſo, even in this caſe, ſetting aſide the act of the former owner's will, it muſt be delivered at the pleaſure of the preſent owner; elſe the enjoyment of chattels pledged by a herdſman's wife, as authorized by

her former lord, might ſubſiſt without the aſſent of her ſecond huſband: the anſwer is, the intention of a bailment made for ſafe cuſtody only has little force, and is conſequently ſuperſeded by the ſtronger will of the actual owner; and therefore delivery is proper in that caſe: but here, the intention of a pledge, being inferred from the loan, retains its force until the loan be repaid; and therefore it is not ſuperſeded: and the enjoyment of a thing pledged by a herdſman's wife, being authorized by her former lord, is honeſt.

This is confirmed by the opinion of RAGHUNANDANA: and the author of the *Mitácſharâ* in effect admits the debtor's ownerſhip in the pledge. According to the modern opinion, when a thing is twice hypothecated, the predominancy of the firſt hypothecation is founded on the pledge not being relinquiſhed by the creditor who has received it.

From the text cited in Book I, (v. CCLXXI), it appears that the produce of a thing held by one creditor is applicable to the payment of the debt due to him, although the debtor have the ownerſhip of it: or what has been artfully obtained by a creditor from his debtor, is applicable to the payment *of the debt due* to that creditor, not to any other. In this caſe, if a loan have been advanced on a pledge, the firſt lender is conſidered as entitled to the thing, not the laſt creditor. But this lender cannot be ſaid to have a ſtronger title than a purchaſer; for no ordinance declares it. By adequate puniſhment inflicted *in ſuch inſtances* on the buyer and ſeller, the king may relieve the fears of lenders.

"Property acquired by marriage" (XVIII 3), ſuppoſes alſo what is gained by valour. Not every gift, with or without conſent, ſubſiſts: therefore gifts of thoſe three kinds of property, as mentioned in the ſubſequent text, muſt be made with reference to *the conſent of* others. The *Retnácara.*

The meaning is, that the terms of the text denote, *that* the aſſent of another, as well as the aſſent of the giver, *is required.*

MISRA explains "property inherited from anceſtors," immoveable property which has not been divided. Conſequently, the immoveable patrimony, received by brethren in right of their connexion *or affinity* as ſons or the like, may not, ſo long as it remain undivided, be given by one ſon without the aſſent of the reſt: the commentator does not conſider gift as forbidden, when there

there are no brothers who are coparceners, and there are brothers and ſons with whom partition has been made. If it be aſked whence *the limitation of* "immoveable" is obtained, *the anſwer is*, from the text of VYÁSA (Chap. II, v. VI). If it be *again* aſked whence *the limitation of* "undivided" is obtained, *the anſwer is*, from the text of NÁREDA (VI). Therefore MISRA does not ſay, that a father may not give *any thing* without the aſſent of his ſons: as we ſhall hereafter ſhow.

"Do not ſubſiſt" (XVIII 3) denotes the nonentity of every gift *(that is, ſome do, and ſome do not ſubſiſt)*; ſuch is MISRA's meaning. And in the ſubſequent text (XIX 4) it is declared, that if thoſe three reſpectively (what is acquired by marriage, &c.) be given with the aſſent of the wife, of the co-heirs, or of the king reſpectively, the gift has validity: for it is a rule, that things named in order, ſhould be referred reſpectively to the terms placed in ſimilar order; as in the example, he cuts a *D'hava*, and a *C'hadira* tree, with a bill and an axe.

"Acquired by marriage;" what *is* received at *nuptials on* obtaining a bride. There the rule bears, that the aſſent of the wife is required when the property is given away by the huſband, not when it is employed in procuring raiment or the like for conſumption; ſince that would be a moral conſtruction of law. Civil law is founded on reaſon, not on revelation *only;* for it may reſt on another poſſible foundation: accordingly VRÍHASPATI directs that deciſions ſhall be made according to the reaſon of the law (XVII). MISRA.

Here the expreſſion "at nuptials," is employed comprehenſively; for the rule bears, that even what is afterwards given, with a declaration, "this is beſtowed on thee, that my daughter may be maintained with it," ſhould not be given away by the huſband without the aſſent of his wife. What is given with a declaration of its uſes for the maintenance of the wife, becomes the property of the huſband concurrently with her; therefore it is fit that the gift ſhould be made with her conſent. In other caſes, his property is independent of her: what ſhould prevent a gift without reference to her conſent?

If it be ſaid, the huſband's gift is in no caſe proper without the aſſent of the wife, becauſe the text, "property is common to the huſband and wife," ſhows her title in the whole of his

wealth, and ſhould not be otherwiſe explained without an objection *exiſting to its literal interpretation:* that is denied, becauſe the wife's property muſt be inferior, as it is ſubordinate to the huſband's; and the right of perſons living under the control of others, cannot prevent the deveſting of property appertaining to the perſons under whom they live.

May not the wife's title ſubſiſt although the thing be given away, for her property is not deveſted? It ſhould not be anſwered, the wife's property, being dependent on the huſband's, ſhould be conſidered as annulled when his title is transferred. Were it ſo, his right being deveſted by his death, and the property veſted in the ſons, their mother would not be entitled to a ſhare, in right of her former property, when they afterwards make a partition. *To this it is replied,* that the difficulty is removed by ſaying, the mother's title to a ſhare is not founded on her former property, but on poſitive texts; and if it be wiſhed to interpret the text according to the reaſon of the law, the veſting and deveſting of the property cannot be eſtabliſhed without *the ſupport of* an expreſs ordinance: but, under the authority of the text, and by the force of the poſſeſſor's will to make a gift, the deveſting of the huſband's property is accompanied by a transfer of the wife's. However, the deveſting of his property by death or degradation is excluded from this conſideration. Thus muſt the law be interpreted.

According to the opinion of JÍMÚTAVÁHANA and others, (who contend that the wife is not entitled to the eſtate of her huſband who leaves no male iſſue,) food and raiment muſt neceſſarily be given to her, although her huſband's brothers ſucceed to the whole eſtate: that alone is her right; but ſhe cannot claim partition with his brothers, for no ordinance *has authorized it:* and, ſince women are dependent on men, ſurely their property muſt be ſo likewiſe.

Since the huſband's wealth is common to him and his wife, it is joint-property; and if it be given away by the huſband, her ſhare *nevertheleſs* ſubſiſts, as in the caſe of joint-property belonging to two brothers. This *again* is denied; *for, in practice,* that is conſidered as joint-property in which there is equal right on both ſides. Hence, even thoſe who contend for the equal dominion of a father and ſon over an eſtate inherited from the paternal

ternal grandfather, do not affirm that the ſon's ſhare in it ſubſiſts if it be given away by the father alone, for he has not joint-ownerſhip with the father. The term is derived from equality: but that eſtate does not equally belong to the father and ſon; for one is ſuperior. The expreſſion "equal dominion," is vague, intended to prevent the father acting *ſolely* at *his own* pleaſure in the partition of the heritage: it is founded on connexion by birth, which common ſenſe does not make equal; and it muſt be eſtabliſhed that the ſon's claim in right of affinity is included in the father's. Admitting, with JÍMÚTAVÁHANA, diſperſed property, *ſtill* the ſon's right muſt be conſidered as the ſame with the father's, being referred to the ſame quarter. Hence, in a partition made by the father, no ſhare is given to a grandſon whoſe *own* father is living.

There is no diſpute on the opinion of thoſe who hold that the text which declares wealth common to the huſband and wife, implies only the expenditure of his property in honouring gueſts, not a right veſted in her. But it is irregular to interpret a text otherwiſe, without unfitneſs *in its literal ſenſe*: and we hold it proper, that the wife's co-operation ſhould be required in civil contracts, as in religious acts; under the text, "The wife is declared to be half the body of her huſband, equally ſharing the fruit of pure and impure acts" (Book V, v. CCCXCIX); and again, "Then only is a man perfect when he conſiſts of *three perſons united*, his wife, himſelf, and his ſon" (Book V, v. CCLII 4).

"For that would be a moral conſtruction of law" (gloſs of MISRA above quoted); the *Smṛiti*, which is founded on the reaſon of the law, relates to viſible effects, grounded on authority, other than *moral* precepts, but deducible from reaſoning: but, where the reaſon of the law does not appear, there, as the authority of it muſt of courſe be ſought, effects are ſuppoſed which proceed from the *Véda* alone, an authority independent of life; and ſuch effects, in ſome inſtances pure, in others ſinful, are unſeen, *or metaphyſical*. If this text imply immorality, a difficulty would ariſe from the additional neceſſity of eſtabliſhing an unſeen *or moral cauſe*, contrary to the immorality declared to ariſe from thoſe ill actions, and independent of the declared effects of the moral cauſe mentioned. Such is the ſenſe of

MISRA's remark. The unſeen *or moral conſequences* of irregular conduct are declared: by diſcriminating the degree of irregularity, crimes of ſeveral degrees reſult from one general expreſſion; penance muſt be performed accordingly, and puniſhment muſt be proportioned to penance: but, in this text, reaſoning, not morality, is ſhown. Such is MISRA's meaning: to expatiate would be ſuperfluous.

Should not ſcripture be eſtabliſhed as the foundation of the ſyſtem of law, declaring it to be founded on ſcripture; but not independent of reaſon? Reaſoning is not obviouſly denoted by the text; therefore he ſays, civil law is founded on reaſon: but rules concerning lunar days, and the like, are abſolutely founded on ſcripture. How then is law called *Smṛĭti?* Sounds, which were heard from the utterance of the Supreme Being, are called *Sruti*; they are the *Védas;* and theſe names are interchangeable. Words which were delivered by holy Sages from recollection of the ſenſe, after forgetting the words revealed by the Supreme Being, or even while remembering them, are called *Smṛĭti*. If recollection of the ſenſe of the *Védas* be not admitted as its foundation, how can it be called *Smṛĭti?* The anſwer is, reaſon is not the *ſole* foundation of civil law, but ſcripture alſo in ſome inſtances; accordingly a text of ſcripture concerning partition during the father's life-time, is adduced by the holy Sage BAUD'HÁYANA. But MISRA has ſaid, "it is founded on reaſon," becauſe reaſoning abounds. In the law concerning lunar days and the like, ſcripture abounds; and reaſoning is only ſometimes employed. Again: property is a thing founded on ſcripture; for, without it, the veſting and deveſting of property could not be proved: hence, the conveyance and transfer of it being proved from the ſcripture generally, it has been eſtabliſhed by Sages, from the reaſon of the law, that effects bailed cannot be given away; that joint-property is unalienable without the aſſent of the other proprietors; and that ſeveral property may be aliened at the ſole pleaſure of the owner, and ſo forth.

"For law may reſt on another poſſible foundation" (gloſs of MISRA above quoted): ſince the words of holy Sages are words of living *men*, they have not authority of themſelves. It is true in reaſoning, that one alone has authority in the univerſe: HE, BY WHOSE WILL THE UNIVERSE IS GOVERNED. But it does not follow

follow that the words of Sages have no cogency, for they are void of deception and other faults. Hence the words of Sages, not cogent in themſelves, nor yet deſtitute of authority, derive it from another *ſource*. It is not proper to affirm this ſource to be the Sage's eye, ear, or other organ of ſenſe. Property and the like, which are things inviſible, future, and remote, cannot be apprehended by the eye, ear, or other organ of ſenſe. Nor ſhould it be ſaid, that Sages ſee every thing with the eye of abſorbed contemplation; for it cannot be admitted that any other than GOD ſees all things. It ſhould therefore be affirmed, that the ſyſtem of law has been propounded by legiſlators viewing the ſenſe of the *Védas;* elſe, there can be no other radical authority for the words of Sages. A knowledge of the ſenſe of the *Védas* being eſtabliſhed as the foundation of the whole ſyſtem of law, wherever *a particular* rule may be grounded on a ſenſe deducible from the reaſon of the law, there another authority may exiſt; and it is not actually founded on the knowledge of the meaning of the *Védas*. This ſhould be eſtabliſhed as the implied ſenſe of the term "reſt on" or be cauſed: "a deciſion muſt not be made ſolely by having recourſe to the letter of written codes" (XVIII); if it cannot be made in conformity both with the reaſon of the law and the letter of written codes, the deciſion ſhould be made according to the reaſon of the law alone.

What is received from the maternal grandfather, muſt not be conſidered as having deſcended from anceſtors, but as acquired by the man himſelf.

"Be given with the aſſent of the wife, &c." (XVIII 4). The gift ſhould not be made without her conſent. Is not that which muſt be given with the aſſent of the wife, and which has been previouſly deſcribed by the term "acquired by marriage," the excluſive property of the woman, and nowiſe appertaining to her huſband? Therefore, the huſband having no power to give it away, what purpoſe is there in her aſſent?

XXIX.

VYÁSA:—What ſhall be given *to a bride* at the time of her nuptials, with a declaration *of its uſe*, *made*

made by the giver to the bridegroom, ſhall be her entire property, and ſhall not be ſhared by her kindred.

Though it be the excluſive property of the woman, ſtill the gift *made* with her aſſent is valid, for it is authorized by the owner; and this is implied by the expreſſion "with the aſſent of the wife, of the coheirs, or of the king." *To this it is anſwered*, were it ſo, it would be ſuperfluous *to declare, that* what is acquired by marriage *may be given* with the aſſent of the wife; for, in all caſes, a gift made with the aſſent of the owner is valid.

In the text of VYÁSA, bridegroom in the dative neceſſarily implies that he is the donee; that property is the bridegroom's, not the bride's: by declaring it her entire property, it is underſtood that ſhe has an intereſt in it, which implies that a gift muſt be attended with her conſent. This is denied; for another authentick text, quoted by JÍMÚTAVÁHANA, ſhows that the *legal* heirs of her excluſive property ſucceed thereto.

XXX.

VYÁSA:—What, *indeed*, ſhall be given *at any time* to the huſband in truſt for *his wife*, the daughter *of the giver* ſhall enure to her uſe, whether her lord live or die; and on her death, to the uſe of her iſſue.

Hence, JÍMÚTAVÁHANA makes it evident that it is the bride's property. It intends what is given to the bridegroom, with a declaration, "this ſhall be the bride's;" not *what is given* without this declaration. "At the time of her nuptials" is mentioned illuſtratively; it is not a *requiſite* condition, ſince the declaration *of its uſe* is the cauſe of *its becoming female* property. Therefore ſuch a gift belongs excluſively to the woman: but the conſtruction of law, as delivered by MISRA, that "even what is received by an independent bridegroom, at the time of the nuptials, without ſuch a declaration, may not be given without the aſſent

aſſent of the wife," is incongruous. To this it is replied; what is given with a declaration "this ſhall be the bride's," is her excluſive property; but in that which is given to the bridegroom with a declaration "it is my intention that the bride's maintenance ſhould be *ſecured* by this," the bridegroom has ownerſhip, but with reference to the *conſent of his* wife. This is intended by MISRA, and conſequently there is no inconſiſtency.

But if a declaration be made *in theſe words*, "this ſhall be the bride's," her huſband is not the donee, and he ſhould not be named in the dative. It muſt not be argued that the dative caſe denotes the agent's object, as in the example "ſhe ſleeps with her huſband." The object, *or intention*, "this ſhall be the bride's," has no relation to the bridegroom. SRÍCRISHNA-TERCÁLANCÁRA explains "what is given to the bridegroom," what is delivered into his hands. But others explain "declaration," a notification that "it ſhall be the bride's property:" conſequently the gift is made to the bridegroom, but contemplates the property of the bride; and where the deſign of the gift is that the property ſhall be the huſband's in truſt for his wife, it becomes her property through the medium of his, and belongs excluſively to her by the authority of the text.

In fact, the gift of every ſort of property acquired by marriage, muſt, under this text, be made with *a previous* reference to the wife; as the aſſent of the king *is required* for *a gift of* arms, horſes, elephants, and the like, conquered in war: and it may be affirmed, that the rule is aſſumed from the reaſon of the law, grounded on the wife's intereſt *in the chattel*. The juſtneſs of one opinion, (MISRA's, or theſe,) ſhould be thoroughly examined.

With the aſſent "of the coheirs" (XVIII 4); meaning undivided brethren and the reſt. MISRA.

"Of the king" (XVIII 4). He in whoſe army a man combats is the *king or* lord: in giving wealth gained by valour, his aſſent is required. VÁCHESPATI MISRA notices a diſtinction: the king's conſent is required for a gift of arms, horſes, elephants, and the like, gained by valour or by victory in battle; for his ownerſhip is ſuppoſed: but *it is* not *required* for *a gift of* clothes or the like; for they are ſuppoſed to devolve on the conqueror's men. Others hold, that, in regard to the ſurrender of his cities by the conquered king, and in regard to horſes and the like ſeized by the enemy and

and given by the victorious prince, the concurrence of the conquered king is required. VÁCHESPATI MISRA does not accede to this laſt opinion; for he has not explained this contradiction.

" The gift has validity " (XVIII 4): but not without the aſſent of the wife, of the coheirs, or of the king.

" Heirs, *whether they be divided or* undivided, &c.;" brethren and others of right receiving the heritage of him whoſe inheritance they take. MISRA ſtates the import of the term " divided;" although heirs have made a partition, their ſhares, if not ſeparated, remain in common, and are conſequently joint-property. In that caſe a ſingle parcener has no power to give, pledge, or ſell the whole. But if all the effects be ſeparate, the act of a perſon who is his own maſter is valid. In effect this relates to caſes where no partition *has been made*. It muſt be noticed, that ſince thoſe *ſhares* appear virtually to be held in common, the ſenſe of the text ſhows that joint-property may not be given. CHANDÉSWARA, from the derivation of the term *(dáyam ádatté*, takes the heritage), explains *dáyáda* or *heir*, a ſon or the like; (as the *Calpateru*, in a gloſs on the text of 'APASTAMBA, expreſſes " heir, ſon, or the like;" and the author of the *Pracáſa* alſo explains the term in the ſingular number.) Conſequently he concurs with MISRA: thus " heir " *ſignifies* " ſon;" to the queſtion " whoſe ſons?" the anſwer is, " his from whom the eſtate has deſcended:" hence the brothers of the donee are virtually ſuggeſted by the terms of the text. Conſequently all the ſons of the original proprietor are equal owners: hence no one has power to give away the joint-property; he has not the independent power requiſite to the validity of his act. VÁCHESPATI MISRA ſtates this opinion of CHANDÉSWARA *in theſe words:* " others hold " that the term heir chiefly intends ſon: while the father lives, " even a ſeparated ſon has not power over the immoveable eſtate; " but what he has acquired by the acceptance of gifts, and the " reſt of the ſeven modes of acquiſition, he may give away." Conſequently, while the father remains, ſons, with whom no partition has been made, have not power over the immoveable eſtate; and while he lives, they are not uncontrolled in receiving, aliening, and diſſipating property. The texts have the ſame foundation: but in that text the dependence of undivided heirs,

in

in regard even to moveable effects, is further denoted, and it ſhows that ſeparated ſons have not power over immoveable property.

Some expound the phraſe "heirs or ſons have a lien equally" (XVIII 5), they are owners equally with their father: accordingly it appears from the text of YÁJNYAWALCYA (XIII), that the father has not power to give away immoveable property without the aſſent of his ſons; and that is actually declared by the legiſlator (XIV): and this text they hold to have the ſame import.

"Conciſely the ſettled rule is this: joint-property, which has deſcended from anceſtors, can *only* be given away with the conſent of the other parceners; divided moveables *may be aliened* at the owner's pleaſure, but immoveables with the conſent of thoſe who were parceners before partition: in the caſe of wealth acquired by marriage, the aſſent of the wife is requiſite; of other property, acquired by a man himſelf, a gift may be made at his own pleaſure. Such is the opinion of CHANDÉSWARA, and alſo of VÁCHESPATI MISRA: but the aſſent of the wife is only required for what has been given to the bridegroom, with a declaration, "let this be the bride's," and not in every inſtance of property acquired by marriage: and there is this difference; *according to the laſt opinion*, the aſſent of the reſt of the brethren is not required for a gift of divided immoveable property. In the former opinion there is *alſo* this difference: what has deſcended from anceſtors muſt *only* be given with the aſſent of ſons; and ſo muſt immoveable property acquired by a man himſelf.

CHANDÉSWARA has not clearly explained, that, if the ordinance be infringed, the gift is void. In the want of an able expoſition on the words "the gift has validity" (XVIII 4), it is inferred that the gift is not valid *in other caſes*. It is the opinion of VÁCHESPATI MISRA, that the gift is void; for, in a gloſs on "divided or undivided" (XVIII 4), he ſtates, "but, after partition, a gift made by an independent perſon is valid."

JÍMÚTAVÁHANA ſays, "a gift made by the owner, not diſ-"qualified by inſanity or the like, is in no caſe void; the gift is "valid to the amount of his own ſhare even of landed property." The wife's gift of property belonging to the huſband to whom ſhe is united, has not been conſidered by any modern author: the

the diſcuſſion *of this point* may be ſeen in Book V. On Inheritance.

The text, "at his pleaſure he may give what himſelf acquired" (XVIII 3), is not reſtricted to property other than immoveables: but it applies to whatever *the owner* himſelf acquired, whether moveable or immoveable; for there is no authority for any reſtriction. Such is CHANDÉSWARA's opinion: but it may be objected, that a limitation might be deduced from the text cited by JÍMÚTAVÁHANA and others (XIV).

Declaring valid the gift of property acquired by a man himſelf, or inherited from his father (XVIII 2), the Sage declares the moral purity of gift, "at his pleaſure he may give, &c." (XVIII 3). Conſequently there is no reference to the aſſent of any perſon; and a gift actually made is morally pure. But of property acquired by marriage, or inherited from anceſtors and not divided, the whole ought not to be aliened. Such is the ſenſe *of the text* (XIX 3). For, the bride having ownerſhip in what is given with a declaration of her property, the bridegroom is not independent in regard to it: but, if it be given with a declaration only of its uſe for her maintenance, a gift *of ſuch property* made by the huſband is valid. For this purpoſe it is ſaid, not every gift ſubſiſts, *or the whole ought not to be aliened* (XVIII 3). In regard to what has deſcended from an anceſtor and is undivided, a gift of the whole made by one parcener is not valid; but the gift of his own ſhare is good in law. The Sage declares the form of validity in gifts (XVIII 4): the whole property acquired by marriage, or inherited from an anceſtor, given with the aſſent of the wife, or of all the coheirs, is a valid gift: ſince the king's favour concurs to the ownerſhip of property acquired by valour, even a trifle given without his conſent is not a valid gift; for, without his conſent, the occupier has no independence. Such is the ſenſe of the text: and that is proper, becauſe the king maintains the army for the ſake of victory in war; hence, what is conquered by the troops, of right belongs to the king, elſe the ownerſhip of territory conquered by his forces would be ſhared. Or, what diſtinction is there in reſpect to clothes, horſes and elephants, territory and the like? As to what is gained by deſperate valour, as well as by valour *generally* (Book V, v. CCCLX), even there it appears that the king's aſſent is requiſite to enjoyment, to gift,

and the like. But the king, any-how informed, gives immediate mental aſſent: inſtances of *formal* conſent are not much ſeen in practice.

In regard to immoveable property inherited from an anceſtor, the aſſent of brothers and the reſt, who, though ſeparated, may ultimately be entitled to a partition of it, is the cauſe of moral purity by the gift: but the donation is not void without their aſſent, for that is not denoted by the text. As to the inference, that the gift is void, becauſe diſability is denoted by the expreſſion "has no power" (XVIII 5), it is inadmiſſible; for, the diſability may be otherwiſe effected: thus, when an heir, though divided, forbids the gift or ſale of immoveable property inherited from an anceſtor, the occupier cannot give it in contempt of that prohibition. Such is the ſenſe of the words "has no power;" and practice alſo conforms therewith.

A gift of immoveable property, made by a father without the aſſent of his ſons, is valid: but he ſhould be amerced, and muſt perform penance; for their equal dominion is propounded under the title of Inheritance.

XXXI.

YÁJNYAWALCYA:—Over land acquired by the grandfather, over a corrody *out of mines or the like ſettled on him and his heirs by the king*, and over ſlaves employed in his huſbandry, the father and the ſon, *when the grandfather dies*, have equal dominion *.

And that is pertinent, as it relates to inheritance; elſe, ſons could not have ownerſhip while the father lives: but to affirm that the right is ſimilar, would be *mere* childiſh prate. At preſent, the title becomes ſimilar after partition, as is ſhown in Book V. On Inheritance; and the texts of VISHNU and others confirm it: but a gift by a father under the impulſe of anger, or the like, is not valid. Such is the modern opinion: no one has expreſsly ſaid, that the immoveable patrimony, given without the aſſent of ſons and the reſt, is not a valid gift. Even the king ſhould

* Book V, v. XCII.

ſhould not, in breach of the law, give immoveable property for civil purpoſes; but he may give land or the like for religious uſes: ſo may any other owner give away his own property for ſuch uſes; it is not proper, in this inſtance, to diſcriminate moveable and immoveable property: the family, however, ſhould not be diſtreſſed, as appears from a text cited by JÍMÚTAVÁHANA (XI).

From the rule, that 'evil is not the conſequence of an act producing good, and conſiſtent with the *Védas*, provided the act be different from incantations to deſtroy enemies and the like,' ſome infer, that ſin is the conſequence of a gift of property, when there was no exceſs above the *neceſſary* ſubſiſtence of the family, *(this being comprehended in that vague exception;)* hence the rule of deciſion in this inſtance is ſimilar to that which regulates gifts for civil purpoſes: but thoſe who are able ſpeedily to acquire wealth, perform the *coſtly* ſacrifice *Viſwajit**, or the like.

XXXII.

VÁJNYAWALCYA:—Let the acceptance be publick, eſpecially of immoveable property: *and*, delivering what may be given and has been promiſed, let not a wiſe man reſume the donation.

"Publick;" in the preſence of witneſſes; let him ſo act that he may not afterwards ſay, "this was not given by me, but intruſted for uſe."

"Eſpecially of immoveable property:" a gift of land, without the aſſent of ſons and the reſt, is not conſonant to duty; therefore arbitrators may think it has the appearance of *a contract* not made: kinſmen, even though divided, may litigate; and abſolute property is aſcertained by poſſeſſion for twice the period which confirms *a right to* moveable effects: theſe and many other obſtacles exiſt in regard to land; it is therefore ſaid, "eſpecially *the acceptance* of immoveable property."

A written contract of gift is proper; in the want of that, the donation ſhould be atteſted. The contract ſhould be written with

the

* MENU, Chap. XI. v. LXXV.

the donor's own hand; and, in theſe times, it ſhould be witneſſed: elſe a litigant, averring that it was obtained by compulſion, may render the writing vain. The witneſs ſhould be a kinſman, a publick officer, or other principal perſon; for an authentick text declares,

XXXIII.

Land is conveyed by ſix formalities, by the aſſent of townſmen, of kindred, of neighbours, and of heirs, and by the delivery of gold, and of water.

Literally "of the town;" meaning the rational inhabitants of the place. "Kindred;" perſons who might eventually be entitled to the heritage after the giver's *male* iſſue, namely daughter's ſons and the reſt. ["The lord,"] the king, or his ſubſtitute, or any king's officer employed for the purpoſe. "Heirs," ſons and the reſt. *Land is conveyed* with the aſſent of theſe; that is, with their acknowledgement of knowing the gift, or with their atteſtation: but the author of the *Mitácſharâ* ſays, the gift ſhould be made after they have aſſented. By "town," according to him, is meant the king's officer reſiding in the town: his aſſent is required to aſcertain the boundary; elſe, the gift may be *either* void or immoral, *(according to the difference of opinion on that point,)* becauſe it may include the joint property of others. By "kindred," *according to him*, are meant brothers and the reſt: without their aſſent, a gift is defective, as already ſhown. By "lord" is meant the king; his aſſent is required, becauſe ſubjects are dependent (XV 2): in a gift of land, the aſſent of him by whoſe will it is held, and by whoſe favour the encroachments of others are prevented, is indeed proper. By "heirs" are meant ſons; their aſſent is required by the text cited in the preceding ſection (XIV). "A delivery of gold" with land, for the purpoſe of ſhowing a complete gift, is proof of donation. "Water" is delivered with *tila* and *cuſa*, for the auſpiciouſneſs of the gift. And thus a donation of immoveable property for religious uſes is excellent; but, for civil purpoſes, a gift of immoveable property ſhould not be made by prudent men: this is a ſettled rule.

By proceeding ſo far, great difficulty would ariſe in gifts of

landed property for civil purpoſes. But, when the townſmen and the reſt are witneſſes to the contract, there is no controverſy. If, by accident, they be not witneſſes, their aſſent ſhould be noticed in the deed of gift, and the written contract ſhould be made in the ſame form with a written contract of loan; for the directions of YÁJNYAWALCYA are general (Book I, v. XVI).

The form of the writing ſhould be this: in place of the creditor's name, let the donee's be written, and the names of his father and ſo forth, to prevent a miſtake of the perſon; next ſhould be written, "this deed-of-gift, *as follows:* for the ſake of heaven I give unto thee, with gold and water, this land, meaſuring ſo much, and exceeding the *neceſſary* ſubſiſtence of my family, *to be* held for ſuch a period." If the townſmen and the reſt be not witneſſes to the deed, or if they be not preſent, the inſtrument ſhould expreſs, "with the approbation of the king, and with the aſſent of ſons," and ſo forth. Though the conſent of ſons be not required in a gift for religious purpoſes, it ſhould nevertheleſs be noticed, (on account of the difficult publicity of a gift of immoveable property, which has been remarked by Sages,) that himſelf and his deſcendants may not claim ownerſhip. The year, month, fortnight, and day ſhould be noted; and the donor ſhould ſubſcribe his name with his own hand, firſt writing the deſignation of his father and ſo forth. The names of witneſſes, informed of the whole contents, may be ſubſcribed by another hand, after aſking *their permiſſion;* but the writer's name *muſt be added.* If any party be unable to write, *the inſtrument* ſhould be ſubſcribed by a ſubſtitute: but the donor, if unable to write, makes ſome mark, as a double line, or the like. Such is the practice.

"A contract written by the party himſelf, even though not atteſted, is *good* evidence; but, if atteſted, it is indiſputable: and therefore it is proper to make it *in that form.* But if there be not the atteſtation of kinſmen and the reſt, then it muſt certainly be queſtioned by the king. Such ſhould be the written contract of gift for the whole of joint-property: in grants by a king there is ſome difference.

XXXIV.

YÁJNYAWALCYA:—Let a king, having given land

or

or aſſigned a corrody, cauſe his gift to be written, for the information of good princes, who will ſucceed him,

2. Either on prepared ſilk, or on a plate of copper, ſealed above with his own ſignet. Having deſcribed his anceſtors and himſelf,

3. The quantity of the gift, with the penalty of reſumption, and ſet his own hand to it, and ſpecified the time, let him render his donation firm.

"A corrody;" the gift of a thing aſſigned on a fund. "For the information of good and juſt princes;" not of unjuſt princes, for they indeed violate even written grants. How ſhould the writing be framed? He ſays, "on prepared ſilk," or (becauſe that is not durable) "on a plate of copper." "The gift;" the land or thing which is granted. *Having deſcribed the* quantity of it; "its quantity ſo much." Declaring the conſequence of reſuming a gift. Setting his own hand to it; "what is here written has the aſſent of me, ſon of ſuch a one:" with ſuch words ſubſcribed, and with the date affixed; that is, the date of his reign, or the time of an eclipſe of the moon, or the like. By the aſſent of the king, the donation ſhould be rendered firm.

The conſequence of reſuming a gift is thus ſhown.

XXXV.

Adi purâna:—The giver of land remains in heaven ſixty thouſand years; but he who reſumes it, or aſſents *to the reſumption*, ſhall ſo long inhabit a region of torment.

In the *Dipacalicâ*, a corrody is thus explained: the gift of a future thing by a previous agreement, in this form, "I will give a hundred *ſuvernas* every month of *Cârticì*," or, "out of this mine, or this village, I will annually give a hundred *ſuvernas*," or, "I will monthly give one *ſuverna*."

How can there be property in a future thing; for it has not,

at that time, a place on which to reſt; and the act of volition ceaſes after creating the right. Neither is *it true, that* a future thing *is* not given, but only promiſed: were it ſo, after the death of that king, on the acceſſion of his ſucceſſor, the corrody would be loſt. Nor ſhould this be deemed admiſſible; for it is inconſiſtent with *the practice of* reſpectable men. *To this it is replied,* that the paſt exiſtence of volition is the cauſe of *this* property: hence the *Bráhmana* has a right to the future thing; and, ſhould another king reſume *the grant,* he falls to a region of torment for ſeizing holy property. The gift of a corrody is at once completed; but it ſhould be inſerted in the written grant, "I will give a hundred *ſuvernas* every *Cárticì*."

If property is not created in a future thing, why is the partition of a corrody diſcuſſed? The word itſelf juſtifies its futurity, and implies volition; and the term "gift" is extended to corrody for the purpoſe of confirming it, like the ſale or transfer of a debt. The grant of the penſion ſhould be prefaced with theſe words: "this written grant of a corrody."

"For the information of good princes:" elſe a prince, though good, might reſume it through ignorance or doubt; a bad prince would *probably* reſume it knowingly. To denote this, the epithet good is added. This is meant generally. A conſequence of the grant is the ſpreading of the donor's fame: accordingly, an authentick text, cited by GÓYÍCHANDRA, expreſſes,

XXXVI.

So long as his fame, unforgotten, pervade the earth and air, ſhall the generous man remain in a celeſtial abode.

It is related in the *Mahábhárata*, that, having performed many virtuous acts, and enjoyed heaven during a very long period, the king INDRADYUMNA, falling *from heaven* when almoſt all his contemporaries were dead, though *the merits of* his virtuous deeds were yet unexhauſted, aſked of the Sage MARCANDÉYA the ſtory of his fame: but he, though he had lived long, being unable to relate it, referred him to one born before himſelf; that perſon alſo unable

unable to relate the ſtory, did the ſame: this ſeries *of reference* being continued, a turtle in the lake of the DÁNAVAS rehearſed the whole hiſtory of INDRADYUMNA. By this his fame, before extinguiſhed, again blazed, and by its own effulgence cauſed the king INDRADYUMNA to aſcend to heaven.

As prepared ſilk is not very durable, a plate of copper is directed. According to the thing to be given, a particular leaf *or plate may be uſed.* Copper is here mentioned for its purity and auſpiciouſneſs: this is meant generally, comprehending ſilver and the like.

"His own ſignet;" a thing uſed to ſtamp at once the whole of the letters in an uniform mode: the letters may be thoſe which expreſs his name, or others, but ſuch as cannot be uſed by another perſon.

"His anceſtors;" the race from which he ſprung; his own anceſtors born of that race: for the purpoſe of ſpreading their fame with his own, and to prevent the miſtake of another perſon bearing the ſame appellation.

"Himſelf:" ſince it is cuſtomary to inſert the name of the donee and the reſt, and ſince his own appellation is actually inſerted from the neceſſity of obſerving the form of a written contract of debt, or is inſerted becauſe it is engraved on the ſeal, ſomething more muſt be *here* meant; and that appears to be his own titles of honour: though it be improper to exalt and celebrate himſelf, ſuch praiſe is not improper from his own dependents. Thus ſome explain the texts: but others hold, that, ſince he is dignified by ſpiritual perſons with titles of honour, it is proper to inſert them.

"Deſcribing the quantity" of land, in this form, "land meaſuring ſo many cubits." In fact its deſcription by time and place ſhould be inſerted: however, that is not ſhown in the text of YÁJNYAWALCYA (XXXIV), but *is inferred* from practice: it is uſual to inſert the *name of the* town and the like.

"The penalty of reſumption:" the conſequence of reſuming what has been given, as has been mentioned; and another authentick text, *cited* in the *Dípacalicá, denounces the penalty.*

XXXVII.

But he who ſeizes the ſubſiſtence of prieſts, whether

given by himſelf or by another, is born a reptile in ordure for ſixty thouſand years.

It is ſhown by texts cited in the *Ecâdeśí tatwa* (XXXVIII and XXXIX), that a man ſeizing holy property is guilty of a *crime equal to* the murder of a prieſt; and, ſeizing the property of a *Cſhatriya* and the reſt, *he is guilty of a crime equal to* the murder of a ſoldier and ſo forth.

XXXVIII.

Váyu purána:—Since property is called external life, he who takes it ſlays the owner.

XXXIX.

Sanc'ha:—He who reſumes the ſubſiſtence of any man, of what tribe ſoever, muſt perform the expiation preſcribed for killing a perſon of that tribe.

XL.

Háríta:—He who gives not what he has promiſed, and he who takes back what he has given, ſinks to various regions of torment, and ſprings again to birth from the womb of ſome brute animal.

Theſe and many other conſequences from reſumption of gift have been propounded; for the ſake of illuſtration, a little has been inſerted *in this place*. Many fruits, *accruing* from the gift of land, have alſo been mentioned by Sages.

XLI.

But he who accepts land, and he who beſtows it, performs

performs pure acts, and ſhall certainly go to a region of bliſs.

And "the giver of the land obtains landed property*," and ſo forth; but that is not mentioned by YÁJNYAWALCYA.

As the direction for the king's ſubſcribing the grant with his own hand may be fulfilled in any words, ſome explain it, that he ſhould only write with his own hand, "ſo much land given to ſuch a perſon." They think it ill reaſoned *to require* the words "this deed of gift," as practiſed by his officers.

"The date;" 'his own' is brought forward; conſequently the ſenſe is, the king ſhould execute the deed of gift dated by the year deſcribed from the reigns of princes of the ſame dynaſty. His titles, and the denunciation againſt the reſumption of gift, *ſhould* be placed above, and on the left ſide; for it is cuſtomary to put the name of the giver on the right ſide. Let him render his donation firm, that it may have long duration. Thus ſome explain the text (XXXIV).

A deed of gift, or the grant of a corrody, ſhould be thus framed in the form directed for a written contract of debt; it is ſeparately mentioned, for the additional direction of a ſeal and the like. This gloſs is grounded on the *Dípacalicá*.

Since the prieſt, as well as the king, has property in the ſoil occupied by the ſubject, (for he is declared by MENU to have dominion over the human ſpecies, Chap. II, v. XXIV.) and ſince the prieſt's lordſhip of the ſoil is proved by the practice delivered in the ſyſtem of law (Chap. II, v. XIII), and ſince MENU declares it (XLII), and ſince the prieſt is entitled to a ſhare in the produce of agriculture (XLIII), how is it again beſtowed on him?

XLII.

MENU:—The *Bráhmana* eats but his own food, wears but his own apparel, and beſtows but his own in alms: through the benevolence of the *Bráhmana*, indeed, other mortals enjoy life.

* MENU, Chapter IV, V. 230.

XLIII.

PARÁŚARA:—Giving a ſixth part to the king, a twenty-firſt to deities, and a thirtieth to prieſts, *a huſbandman* is exempt from all ſins *incident to agriculture.*

To the queſtion above ſtated it is anſwered, that *dominion* is expreſſed in a general ſenſe; as a prieſt is not qualified for war, he has not ſuperior ownerſhip: and even admitting the prieſt's lordſhip of the ſoil, a gift may be *nevertheleſs* made to him for the purpoſe of entitling him alſo to receive the ſhare due as revenue to the king.

MENU forbids the levying of revenue from a field occupied by a prieſt; for, otherwiſe, the text quoted in Chapter II (v. XIV 7) would be unmeaning. But ſubjects, even though reſiding on land appertaining to a prieſt, muſt be protected by the king; and the fines impoſed on them ſhould be received by the ſovereign.

If ſome river be deſcribed as the boundary, and the quantity of land be ſpecified, then, ſhould the river encroach on it, the loſs falls on the prieſt, becauſe his land is deſtroyed; as it is his loſs if gold received by him be ſtolen by robbers. But if the river aſſigned as the boundary ſhould recede, the land gained by alluvion belongs to the king; becauſe the gift did not intend that land, and it exceeds the quantity *ſpecified.* But where the quantity is not ſpecified, and the grant expreſſes, "the land as far as the river is thine; what is carried away by the river is thy loſs, what is left by the river is thy gain;" then the loſs or the gain, *whichever it be,* is the prieſt's.

It muſt be conſidered, that if preſent volition, by its privation*, become the cauſe of future property in a future thing, preſent volition, by its privation, may alſo become the cauſe of future property in a preſent thing: as in the caſe of a gift, in this or other form, "this field belonging to me ſhall be thine after my death," the act of volition, which conſtitutes gift, is paſt at that very time. The increaſe of purity, *attainable by gift,* is *gained* on that day *which is* hallowed *by the donation:* but the property *of the giver*

* Alluding to the relation between cauſe and effects.

giver is not deveſted; nor *is it* veſted *in the donee*, until after *the giver's* demiſe. His donation is indiſputable, becauſe it does not differ from relinquiſhment, veſting property in another after deveſting his own property. It ſhould not be objected, that the paſt exiſtence of volition is not ſeen to be a cauſe of property: it is neceſſary to eſtabliſh it in the caſe of corrody; and authors admit the gift of a future thing.

When a debtor pays the debt which he has contracted, by *aſſigning* ſomething which will exiſt on a ſubſequent day, then, the debt being acquitted on that very day, intereſt ceaſes; and that future thing becomes the property of the creditor, and cannot be taken by another. A debtor, deſiring to conciliate the regard of his creditor, may voluntarily add, and give, a quarter, or half of that, and ſo forth, to a creditor eager for intereſt. In this caſe the form of the writing *muſt be regulated accordingly*: if YÁJNYADATTA, having borrowed ten *ſuvernas* from DEVADATTA, on the tenth day of *Aſhâ'dha*, diſcharge *the ſum* on the eleventh day, with *an advance* of a quarter, the form of the writing is this: "I, "having received a loan from thee, on the tenth day of *Aſhâ'dha*, "(to diſcharge that together with intereſt voluntarily ſtipulated, "and amounting to a fourth part of the principal for a ſingle day,) "do give unto thee grain to the value of twelve *ſuvernas* and a "half, at the *current* price of the month of *Pauſha*, to be received "from the produce of this field in the preſent year." If the produce of ſeveral years be aſſigned, it ſhould be thus ſtated, "from the produce of this field for ſo many years." But if the writing bear "for the preſent year," and grain be not produced that ſeaſon, the amount ſhould again be made a debt, for it is not in fact diſcharged: the will to transfer property has alone paſſed, but the creditor has obtained none: therefore the debt muſt be again paid. Where a debtor, intending to pay the debt when due, has carried the ſum from his own houſe with the will that it ſhould become the creditor's property, but in the mean time the money is loſt by accident; as in this caſe it muſt be paid again, ſo in the other caſe likewiſe: for there is equally a want of delivery; and, according to VÁCHESPATI BHATTÁCHARYA, there is an equal want of property. The payment is complete on actual delivery; not on a mental relinquiſhment only.

If he receive a loan from another, pledging to him the produce of

of that field, then the laſt creditor ſhall have the ſurplus produce; he does not in this caſe take a ſhare. If there be no ſurplus, the debt is ſimilar to one unſecured by a pledge; and the laſt creditor ſhall be paid from other aſſets, for he has no pawn. But, if the prior contract were an hypothecation, then, according to RAGHUNANDANA, the firſt creditor muſt obtain his principal and intereſt by any other mode whatſoever, and relinquiſh the pledge: according to other opinions, the laſt creditor only ſhall take the produce; but the firſt creditor ſhall receive intereſt from the date of the ſecond contract, at the rate of two in the hundred or the like, for his pledge was loſt to him on that date. This and other points may be determined from a man's own judgment. CÁTYÁYANA declares, with a diſtinction, what has been ſaid by YÁJNYAWALCYA, that what has been promiſed ſhould be given (XVI).

XLIV.

CÁTYÁYANA; — He who delivers not a preſent which he has promiſed to a prieſt, ſhall be compelled to pay it as a debt, and incurs the firſt amercement.

By this expreſſion, "as a debt," even beating and the like are permitted; but it is incompatible with common-ſenſe that the claimant ſhould beat debtors of the ſacerdotal claſs: it appears, therefore, that the king ſhould employ *compulſory* means for the recovery of the debt. In fact he may compel payment by mild remonſtrance and the like: it is mentioned to ſhow the abſolute neceſſity of payment. Prudent men do not make *abſolute* promiſes; but, intending to give any thing, they ſay, "GOD willing, the purpoſe ſhall be accompliſhed."

From the mention of a prieſt in this text, ſome lawyers doubt whether it relate not to the promiſe of a gift for religious uſes. But that is not right; for, in the caſe of a promiſe for civil purpoſes, the delivery of the gift is alſo neceſſary. It has been declared, that, in the caſe of a promiſe for ſuch purpoſes, what has been promiſed is unalienable (IV 2).

XLV.

XLV.

Matſya purána.—If a man give not what he has *legally* promiſed, let the king fine him one *ſuverna*, or *eighty* ractícas *of gold.*

The contradiction between the fine of one *ſuverna* and the firſt amercement (XLV and XLIV), ſhould be reconciled by diſtinguiſhing the caſe according to the virtuous or vicious diſpoſition of the party.

YÁJNYAWALCYA has ſaid, "let not a wiſe man reſume the gift" (XXXII); there, reſumption is of two kinds, refuſing to deliver what has been given, and taking it back after delivery: the fine is the ſame, for they are *like* a pair of horſes coupled in one yoke; and no other fine has been mentioned. HÁRÍTA declares the offence equal (XL and XLVI).

XLVI.

HÁRÍTA:—A promiſe *legally* made in words, but not performed in deed, is a debt of conſcience both in this world and the next.

"Various regions of torment" (XL); the hells named *Raurava*, *Mahárauraya*, &c. What* is promiſed in words expreſſing "I will give," but not actually given, is a debt (XLVI). How can it be a debt; for it is received from him by reaſon of a promiſe, *not by reaſon of a loan?* The legiſlator replies, it is a debt of conſcience. From the words "in this world," it appears that payment ſhould be enforced by the king; from the expreſſion "in the next world," it appears that the promiſe-breaker ſinks to a region of torment. Some infer, from the mention of debt, and from the expoſition on a text *cited in Book* V, at v. CXI, (to thoſe to whom payment has been promiſed by the father,) that what has been promiſed ſhould be ſo paid by his ſon.

All

* MENU, Chapter IV, V. 88.

All this ſuppoſes a promiſe of what may be given; but it does not apply to the promiſe of what is unalienable. Under the directions for an amercement where ſuch property is given away, the king ſhould not impoſe a fine, *at the ſame time* compelling the performance of an undue act; nor ſhould he omit to puniſh ſuch an act. Therefore, half the amercement for giving what is unalienable is incurred by promiſing what ſhould not be given; or the king ſhould compel the man to pay as much as he has promiſed, but has not delivered: two puniſhments exiſting for the ſame offence, the lighteſt ſhould be preferred.

In ſome inſtances it is directed not to give what has been promiſed.

XLVII.

GÓTAMA:—A man ſhall not give, even what he has promiſed, to a perſon whom the law declares incapable of receiving.

His want of religious qualification is here the cauſe of his not being entitled to the gift.

Vivâda Retnácara and *Vivada Chintámeni.*

XLVIII.

MENU:—Should money or goods be given, *or promiſed as a gift*, by one man to another who aſks it for ſome religious act, the gift ſhall be void if that act be not afterwards performed:

2. If the money be delivered, and the receiver, through pride or avarice, refuſe *in that caſe* to return it, he ſhall be fined one *ſuverna* by the king, as a puniſhment for his theft.

Money or goods given, or promiſed, by one man to another who aſks it for a ſacrifice, ſhould he not afterwards apply it to that purpoſe, ſhall be taken back if given, and ſhall not be delivered if promiſed *only*. CULLÚCABHATTA.

If

If the donor give money to a prieſt for a ſacrifice which he himſelf requires, and the prieſt, not performing that duty, apply it to his own uſe, at his own pleaſure, then the money may be withdrawn: but it muſt not be reſumed, if the man, aſking it *in theſe words*, "I perform a ſacrifice for myſelf, give me *this* money or *theſe* goods," and receiving the money or goods, do not perform the religious ceremony. Thus ſome interpret the law: but that is not ſatisfactory; for his aſking it would not be the conſideration. Therefore, the conſtruction is this: 'to another, who aſks it for ſome religious act;' that is, to a perſon who aſks it, *at the ſame time* ſaying, "I will perform an act of religion."

According to CULLÚCABHATTA, the ſenſe of GÓTAMA'S text is, "what he has promiſed to a perſon not qualified on religious *grounds*;" according to the *Retnácara*, it is, "promiſed to a perſon diſqualified on religious grounds." Both ſhould be admitted; for a perſon not qualified, *or diſqualified* on religious grounds, is incapable of a gift for religious purpoſes, ſince texts declare "marble tranſports not marble *over the deep*;" and again, "*wealth ſhould not be* diſtributed among women, nor among ignorant or diſhoneſt men:" and this muſt be underſtood of caſes where religious qualifications were ſuppoſed at the time of the promiſe, as will be mentioned (LXII 3). But if wages, or the like, be the motives of the gift, the donor muſt deliver it even to a man not qualified on religious grounds.

The circumſtance of his not applying what has been promiſed, to the religious uſe *intended*, may be known by *publick* report; for inſtance, ſome perſon declares, "this man, taking money or goods on this account, gives it to a harlot." If the receiver do not *in that caſe* ſurrender what has been given, or if he forcibly take what has been promiſed, he ſhall be fined one *ſuverna* by the king, and ſhall certainly be compelled to reſtore the thing. "As a puniſhment for his theft;" ſince it is thus declared that he ſhall be puniſhed as a thief, *it does not appear* that he ſhould be made to reſtore it by mild remonſtrance and the like.

ART.

ART. II.—*On Valid or Irrevocable Gifts.*

XLIX.

VRÍHASPATI:—Things once delivered on the following eight accounts cannot be reſumed, as wages, for *the* pleaſure *of hearing poets or muſicians and the like*, as the price of goods ſold, as a nuptial gift to a bride *or her family*, as an acknowledgment to a benefactor, as a preſent to a worthy man, from natural affection, or from friendſhip.

"As wages;" as a recompenſe paid for work performed: ſo CHANDÉSWARA, with whom MISRA concurs. Sacrificial fees might, according to this expoſition, be deemed wages; but the grounds on which they are not conſidered as ſuch in forenſick affairs, may be learned under the title of Non-payment of Wages or Hire.

"For pleaſure;" for *the gratification of ſeeing* dancers and the like. MISRA and CHANDÉSWARA.

"As the price of goods," paid to the vender. "As a nuptial gift or gratuity," delivered to the perſon who gives the bride; ſo explained by MISRA and CHANDÉSWARA: a nuptial gratuity is paid at an *Aſura* marriage*; and the pair of kine delivered at an *Arſha* marriage, though not *ſtrictly* a gratuity, is comprehended in this term. "As an acknowledgment to a benefactor;" in return for benefits received: for inſtance, a man not receiving wages, but, from a motive of friendſhip, by his ſtrength or abilities has accompliſhed ſome buſineſs for any perſon; what this perſon gives him, *is an acknowledgment to a benefactor*.

"As a preſent by a worthy man," verſed in the ſenſe of the ſcriptures, given by him for religious purpoſes to a *Bráhmana*. So MISRA and CHANDÉSWARA. It is mentioned incidentally, leſt gifts for religious purpoſes ſhould be reckoned in the number of

* See tranſlation of MENU, Chap. III, V. 31.

of revocable gifts: but NÁREDA does not ſpecify a preſent by, *or to*, a worthy man. His text will be cited (L).

"From affection," towards ſons and the reſt; or from kindneſs to a friend. MISRA.

Or "worthy," may be interpreted the ſtate of worthineſs; what is given to a ſtranger endued therewith, though no benefit ſhould have been received from him, *is a preſent to a worthy man*. "Affection;" kindneſs, friendſhip, and ſo forth; what is on that account given to a friend: *and the laſt term of the text may be interpreted* tender regard, *inſtead of friendſhip;* what is on that account given to ſons and the reſt. Theſe three terms are alſo familiar in rhetorick, as names for love.

L.

NÁREDA:—They who know the law of gifts, declare, that things once delivered as the price of goods ſold, as wages, for *the* pleaſure *of hearing poets, muſicians or the like*, from natural affection, as an acknowledgment to a benefactor, as a nuptial gift to a bride *or her family*, and through regard, cannot be reſumed.

By this is declared the ſeven-fold diſtinction of valid *or irrevocable* gifts: it has been already ſaid, that ſuch gifts are of ſeven ſorts (II 3).

"From natural affection, and through regard:" in theſe, worthineſs may be comprehended; therefore the eighth diſtinction, noticed by VRĬHASPATI, is not excluded: or, a preſent to a worthy man may intend a gift for religious purpoſes, not mentioned by NÁREDA, becauſe he had premiſed civil donations. "In civil affairs, the law of gift is four-fold" (II 2). It ſhould not be objected, that preſents for religious purpoſes are *ſubject to* civil cognizance; elſe how could the king compel delivery? The gift alone is religious; delivery is *a matter of* civil *cognizance*. Then *the law concerning* what may not be given and the like, ſhould be admitted in the caſe of gifts for religious purpoſes? In ſome inſtances it may be admitted; in ſome it may

be inconſiſtent with reaſoning; in ſome it may contradict *expreſs* laws.

MISRA, conſidering kindneſs as influencing every gift, reduces the diſtinctions to ſeven. But CHANDÉSWARA explains "*a gift* from natural affection" (XLIX), a donation to ſons or the like; "through regard," for religious purpoſes: and this, he adds, is intended by VRĬHASPATI in the expreſſion, '*a preſent* by a worthy man: not diſtinguiſhing regard and kindneſs 'from pleaſure, NÁREDA declares ſeven ſorts; and VRĬHASPATI, diſtinguiſhing them, propounds eight ſorts: thus there 'is no inconſiſtency: or they may be reconciled, by ſaying it is 'not implied that one *text* curtails the other.' His meaning is, that, ſince NÁREDA mentions natural affection in addition to regard and kindneſs, the number of ſeven *ſorts* is complete: but as this might ſeem unſatisfactory, diſparaging VRĬHASPATI, who has not ſpecified natural affection *by the ſame term*, he ſubjoins another *mode of* reconciling *the texts*, "it is not implied, &c." that is, NÁREDA's mentioning ſeven ſorts does not imply an excluſion of others; and VRĬHASPATI's diſtinctions *are comprehended* in the ſeven ſorts of irrevocable gifts. An *ample* expoſition of theſe opinions would be a mere diſplay of ſkill; it is not of much uſe to the thorough examination of the ſubject.

A nuptial gift or gratuity is a general term, and may comprehend what is now given to a bridegroom on his marriage to the daughter of a *Rá'd'híya Bráhmana**. Even a nuptial gift of money, received from the kinſmen of a bridegroom, in honour of anceſtors, is taken by the parent, who maintains the boy: ſuch is the cuſtom. But land and the like, received for the maintenance of the bride, is not taken *by her father-in-law;* nor property given at the bridal proceſſion. Wealth alſo, received on a ſecond marriage, is not taken by the bridegroom's father; for a ſecond marriage is contracted for the purpoſe of obtaining that wealth. Nor *is* property which is received after marriage, from the wife's parents *and kindred, taken by the huſband's father*. Such is the eſtabliſhed uſage.

Be it as it may be, according to CHANDÉSWARA's opinion; but, on the other opinion, how are gifts to near neighbours, revenue

* The families of prieſts ſettled on the weſtern bank of the *Bhágirat'hí* river are called, from the name of the country, *Rá'd'híya*, (pronounced *Ráríya*).

venue paid to the king, and a preſent to a wife on the ſecond marriage of her lord, comprehended in the text? To near neighbours preſents are made from friendſhip, or as an acknowledgment to benefactors; for, in this inſtance, the return of an obligation may be ſuppoſed as a motive. Revenue is paid to the king as wages, or as the price of the produce of land, becauſe he has an intereſt in the ſoil. What is given to a wife on the ſecond marriage of her lord, appears to be given for pleaſure (Book V, v. LXXXVII); for the former wife's conſent to her huſband's eſpouſal of another affords him pleaſure. This and other caſes may be underſtood according to circumſtances: in all inſtances, pleaſure, *and gratification*, may be ſuppoſed *to influence the gift*.

The mention of theſe irrevocable gifts is intended to ſhow the motive of donation. In theſe gifts it ſhould be diſtinguiſhed whether the property might, or might not, be given away: but pleaſure, as a motive of donation, muſt be underſtood with an exception to luſt and the like. *On this*, more will be ſaid under the title of Void Gifts.

LI.

DACSHA:—Preſents given to a mother, a father, a ſpiritual teacher, a friend, a moral man, a benefactor, an indigent or unprotected perſon, and a learned man, are productive *of benefit*.

Here it is not meant that they are productive of moral benefit alone, but of other advantage alſo. Does not ſome benefit exiſt in every caſe; why is it ſaid that preſents given to a mother and the reſt are productive? They are productive of the higheſt benefit. If gifts be made to a mother or a father, proſperity in this world, and increaſe of religious merit, ariſe from their ſatisfaction. By gifts to a friend, the higheſt *degree of* friendſhip is obtained. By preſents to a moral man deſerving of them, the higheſt fame *is obtained*. A preſent to dancers is attended with fame, but gains *only* a middle degree of reputation; and therefore is not mentioned in this place. A gift to a benefactor prevents *the charge of* ingratitude. Donations to the indigent and unprotected, from tenderneſs, or from regard to duty, produce religious

merit. Sometimes even what is given without any conſideration of duty, on account of the reſpectable qualities of a deſerving perſon, produces religious merit.

LII.

CÁTYÁYANA:—What is received for relieving a man from apprehenſion of danger, or ſaving him from actual peril, or for promoting a matter in which he was intereſted, is an acknowledgment to a benefactor.

2. Where a reward, offered for the recovery of property miſſing, is received for diſcovering it, the gift is conſidered as *a payment of* wages.

3. But if *the reward be* thus offered, "I will give all my property to him who ſaves me from this danger, to which my life is expoſed," it ſhall not be ſo *given*.

After relieving any man ſinking under apprehenſions from the king or the like, what is received from him is an acknowledgment to a benefactor: ſo what is received for preſerving him from danger. A tiger lies in wait to ſeize ſome traveller, who perceives not the animal; but another man, coming from a diſtance, ſlays the tiger with a weapon, or, boldly taking this man in his arms, carries him far *from danger:* what the traveller, thus ſaved, gives to his preſerver, is given as an acknowledgment to a benefactor. So is a preſent made for accompliſhing ſome buſineſs: for inſtance, ſome perſon has in hand the marriage of his ſon; and any man coming of his own accord, even though not induced by familiar intimacy, accompliſhes the object; what that perſon gives to him after the attainment of his object, in conſideration of the favour received, is an acknowledgment to a benefactor; and ſo in many other caſes.

When a perſon finds not ſome chattel required for a particular purpoſe, and, greatly diſtreſſed thereat, ſays, "whoever ſhows me

me this chattel, I will give him ſo much:" after a reward has been thus offered, ſome perſon coming points out the thing; is the reward then given an acknowledgment to a benefactor, or not? The legiſlator replies, it is not an acknowledgment to a benefactor, but "wages" (LII 2).

A reward for the recovery of property miſſing, is there mentioned generally: *if any man* whoſoever act with a view to a reward, what is given to him is conſidered as his wages; but, where a man acts ſpontaneouſly, *or* from habits of intimacy, what is given to him is an acknowledgment to a benefactor. Yet, even in the caſe of wages, ſhould an exceſſive amount be promiſed by a man in extreme diſtreſs, it ſhall not be delivered (LII 3). Danger of life is mentioned, to denote extreme diſtreſs; in fact, ſhould a man, during a conflagration, or during the ſickneſs of his ſon, or the like, promiſe all his wealth, or one or two *lacſhas*, to the perſon who ſhall ſave him, that promiſe is not valid. But it is reaſonable that the gift ſhould be great in proportion to the benefit conferred; if ten, fifteen, or twenty *pieces of money*, or the like, be promiſed, according to the circumſtances of the caſe, the ſame ſhould be paid. It muſt alſo be conſidered, that, the reſumption of an exceſſive gift being ſhown where it has been promiſed but not delivered, the donor has an equal right to recover it, even though it have been actually delivered.

If an umpire determine a controverſy between litigant parties according to law, and the party who gains or who loſes the cauſe give him any gratuity, it is an acknowledgment to a benefactor: the gaining of the cauſe is an advantage to the one, and the ſolution of doubts is a benefit to the other party. But if the fee have been previouſly promiſed by any perſon, it falls under the deſcription of wages. Yet, if any litigant party, being diſtreſſed, ſhould in any inſtance promiſe, or actually give, an exceſſive fee to an umpire, the exceſs above the ſixth part of the value in diſpute may be reſumed; deducting a ſixth part *of that value* from the amount promiſed *or paid*, he may recover the remainder even through the intervention of the king. This is intimated by JIMÚTAVÁHANA, in the *Dáyabhága*, or *treatiſe on* Inheritance: and RAGHUNANDANA, explaining the text of CÁTYAYANA reſpecting wealth acquired by ſcience, "what has been received as a gift from a pupil, as a gratuity for the performance of a ſacri-

fice, as a fee for anſwering a queſtion in caſuiſtry, or for aſcertaining a doubtful point of law," mentions the ſixth part or the like which is received for well aſcertaining *the point referred by* litigant parties, who apply for an explanation of the law.

If there be ſeveral arbitrators, they all receive and ſhare one ſixth part: for that muſt be intended; elſe, if there be ſix arbitrators, the whole property would be loſt *to the owner*. Since it is mentioned as received for well aſcertaining the point *of law*, it follows, that if the arbitrator, receiving the fee, do not well aſcertain the *doubtful* point, he ſhall be amerced by the king, and the fee ſhall be reſtored to the giver. Such is the reaſon of the law, conformable with expreſs ordinances. But it is cuſtomary ſometimes to give a conſiderable reward to a *Brâhmana* acting as arbitrator, and *uſually* living on alms, when he reſolves a doubt with great labour, or tranſcendent knowledge of law, or for ſhowing the legal form of penance and expiation; ſince it is ordained, in the rules of penance, that a preſent ſhall be made to a venerable perſon: and in that caſe a gift is neceſſary.

If any liberal prince or wealthy man, ſolicitous of gaining his cauſe in a matter of ſmall value, voluntarily give a great fee; the king, informed of the circumſtances, ſhould not fine the arbitrator. It is wealth acquired by ſcience, and is given for pleaſure; and it may be ſaid to have been propounded by DACSHA, "to an indigent or unprotected perſon, or to a learned man" (LI).

The gift of a milch cow and a bull, by a perſon applying for inſtructions on the forms of penance, is declared neceſſary by the text; "let the ſinner proclaim his ſin, giving a milch cow, and alſo a bull:" that *gift* is conſidered as wages. A gratuity which is paid to a prieſt officiating at a ſacrifice, or to a ſpiritual preceptor, is alſo conſidered as a recompenſe; and whatever is given to any *Brâhmana*, for the completion of a man's own buſineſs, is granted for religious purpoſes. But in regard to holy property, as the giver's right is deveſted after conſecration, it muſt then be merely delivered to prieſts. This and other rules may be eſtabliſhed from a man's own judgment.

ART.

ART. III.—*On Void Gifts.*

LIII.

NÁREDA:—What has been given by men agitated with fear, anger, luſt, grief, or *the pain of* an incurable diſeaſe; or as a bribe, or in jeſt, or by miſtake, or through any fraudulent practice, muſt be conſidered as ungiven;

2. So muſt any thing given by a minor, an idiot, a *ſlave or other* perſon not his own maſter, a diſeaſed man, one inſane or intoxicated, or in conſideration of work unperformed.

" Fear," of him to whom it is given. The *Retnácara.*

" A bribe " *(utcōcha)* ſhall be ſubſequently explained *. " In jeſt;" by words expreſſing donation, but without the intention of giving. " By miſtake;" delivering to one what was to be given to another, or delivering one thing inſtead of another which was to be given: ſo CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

" Through any fraudulent practice;" inadvertently, and the like: ſo VÁCHESPATI, BHAVADÉVA, and the author of the *Pracáśa.* But CHANDÉSWARA explains it, propoſing much and giving little.

" A minor;" one who, from nonage, is unable to decide what ſhould or ſhould not be done. " An idiot;" naturally incapable of diſtinguiſhing right from wrong. So CHANDÉSWARA. " Minor " is explained by BHAVADÉVA and VÁCHESPATI, one who diſcriminates not what is or is not done. Fool they explain " idiot."

" A perſon not his own maſter;" a ſon, ſlave, or the like. " Intoxicated;" drunk with wine or the like. " Outcaſt;" baniſhed †.—CHANDÉSWARA, VÁCHESPATI, and BHAVADÉVA.

 " In

* LIX.

† Some copies of NA'REDA read *outcaſt*; another reading is followed in the tranſlation.

" In conſideration of work unperformed;" deluded by the falſe promiſes of the receiver: ſo CHANDÉSWARA. But BHAVADÉVA and VÁCHESPATI explain it, a gift for a conſideration, which is null.

" A diſeaſed man;" afflicted with any malady. " Agitated by pain;" afflicted with an incurable diſtemper.

The *Mitácſharâ*.

The author of the *Mitácſharâ* and others do not approve the reading which omits " a diſeaſed man." *The text is cited, with the other reading, in the *Cámadhénu*, *Mitácſharâ*, *Vivâda-Chintámeni*, *Dwaita-nirnaya*, and other works.

In the *Cámadhénu* and the reſt, the reading is *apavarjitam* given, (inſtead of *apavarjitaih*, by outcaſts from their tribe;) explained by HELÁYUDHA and the author of the *Mitácſharâ*, " what is given by a minor and the reſt, muſt be conſidered as ungiven." They ſuppoſe the validity of a gift made by an outcaſt; yet both opinions may be held to coincide: thus, according to HELÁYUDHA and others, it ſhould be ſaid, that a man baniſhed from the family for the murder of the king, or other heinous crime perpetrated by him, has no right to give away property belonging to that family, becauſe he is not his own maſter. The reading, quoted by CHANDÉSWARA, is *apavarjitaih*, or by *outcaſts*, which he explains, baniſhed *from their tribe:* but CHANDÉSWARA and the reſt do not controvert the validity of a gift, when a baniſhed man gives what he himſelf has acquired *after his expulſion*.

Men agitated with fear, anger, luſt, grief, or pain, are five *whoſe minds are* diſturbed from their natural ſtate; as is remarked by VÁCHESPATI-MISRA, CHANDÉSWARA, VÁCHESPATI-BHATTÁCHÁRYA, and BHAVADÉVA.

This is declared by the ſame legiſlator, who thus deſcribes a perſon not his own maſter;

LIV.

NÁRADA:—Though *generally* his own maſter, what a man does while diſturbed from his natural ſtate of

† *Bálá mú'dhá'swatantrás cha*, inſtead of *Bálá mú'dhá'swatantrá'rta*.

of mind, the wife have declared not done, becauſe he is not *then* his own maſter.

⸗ Some infer this meaning: "where the volition of an owner, diſcriminating what may and may not be done, and guided ſolely by his own will, declares, as is actually intended by him, his own property deveſted, and dominion veſted in a perſon capable of receiving, and actually intended by the donor, over the thing really intended to be given; that volition veſts property in the donee." In caſes of fear and compulſion, the man is not guided ſolely by his own will, but ſolely by the will of another. In the caſe of a man agitated by anger or the like, he is not a perſon who diſcriminates what may and may not be done. If, terrified by another, he give his whole eſtate to any perſon for relieving him from apprehenſions, his mind is not in its natural ſtate: but, after recovering tranquillity, if he give any thing in the form of a recompenſe, the donation is valid. What is given as a bribe, or in jeſt, is a mere delivery, or a gift in words only: there is no volition veſting property in another. As for what is given by miſtake, as gold inſtead of ſilver which ſhould have been given, or any thing delivered to a *Sūdra* inſtead of a *Brâhmana* to whom it ſhould have been given, the gold and the *Sūdra* are not *the thing and the perſon* really intended, namely ſilver and a *Brâhmana.* Though it be aſcertained that ten *ſuvernas* ſhould be paid, if any-how through inattention or the like, fifteen *ſuvernas* be delivered, the gift is not valid; for they are not what was really intended to be given: or the donation is in this caſe void; becauſe the giver did not diſcriminate what ſhould or ſhould not be done. Where much is propoſed and little given,† (as where a man propoſes to give much for what may be effected at little coſt, and, after the work is accompliſhed, pays the ſimple due;) there, ſince the exceſs was only promiſed, or delivered, for the purpoſe of deluding, the will to veſt property *in another* is wanting, and the gift is therefore void, as in the caſe of a bribe: but with this diſtinction, that in the caſe of a bribe the whole gift is utterly null, and here it is void in part.

† This will be *beſt* underſtood after an explanation *of bribe.* According to the opinion of MISRA, ſuch a fraudulent practice is comprehended in this deſcription, for *ch'hala* or fraud is ſynony-

mous with *upadhi*, ſince what is denoted by *the word* "*ch'hala*," or deceit, as employed by MENU, VRĬHASPATI expreſſes by the word "*upadhi*" (Book I, v. CCXXXVIII); and CHANDÉSWARA quotes that and ſubſequent texts, premiſing theſe words, "VRĬHASPATI on the ſubject of *legal* deceit *(ch'hala)* lawful confinement, and violent compulſion." *Upadhi*, in general, is any improper act: conſequently, in every caſe of improper gift, where a donation is falſely promiſed, there is fraudulent practice. CHANDÉSWARA ſubjoins "and the like:" where a man intruſts his own property to another for the purpoſe of deceiving his creditor or the like, ſaying, "it is given to him," the gift is void; and this ſhould be included under the term "and the like." Other caſes may be determined in this manner by intelligent conſideration.

"Here the gift is void, becauſe the will of veſting property is wanting; and the want of ſuch will is inferred from the improbability of ſuch a gift being intended, from *the character of* the perſon, or from the neceſſity which then exiſted of deceiving him, or from the intention of the parties: this and other points ſhould be determined by the wiſe." It muſt however be noticed, that, if a man engage a *Bráhmana* in mechanical arts or the like, by propoſing great wages, it is fit he ſhould receive a large recompenſe; becauſe he is induced, by the deſire of wealth, to deviate from his regular duty: but he ſhould not receive exceſſive wages. Other caſes ſhould be determined in the ſame mode.

The text of CÁTYÁYAN'A (LII 3) muſt be brought under this head, according to the opinion of CHANDÉSWARA: but, MISRA and others explaining "through any fraudulent practice" inadvertently, it may be brought under the head of miſtake; for there exiſts a miſtake of what ſhould not, for what ſhould be given.

If the monthly wages of a hired ſervant be one *mudrà* or coin; and he has performed work at one period for ten months, at another for one month, at another again for eleven months; and afterwards, when it is propoſed to pay the whole wages, ſome perſon ſkilled in accounts has noted the ciphers on the ground in a vertical line, for the purpoſe of computing the ſum; but, through ſome error in notation, miſtaking the cipher of one for ten, computes accordingly; and thinking that thirty-one *mudrás*

are

are payable, ſays ſo to the ſervant's maſter, and the maſter pays that ſum to the ſervant: afterwards, ſome other perſon ſkilled in accounts detects the error: is not the gift *or payment* invalid? for it is given through deceit, according to the opinion of MISRA: deceit ſignifies miſleading; and here he is actually miſled by the words of another. But, according to CHANDÉSWARA, it muſt be *conſidered as given* through a miſtake reſpecting what ſhould be given. How then can the opinion ſtated apply in this inſtance, for the thing and the perſon were really intended; the owner was able to diſcriminate what ſhould or ſhould not be done; he was governed by his own will, and he willed to tranſfer the property in thoſe thirty-one *mudrâs?* The anſwer is, although the perſon were really intended, the giver was not aware that he was a proper donee as far as twenty-one or twenty-two *mudrâs only*, and that thirty-one *mudrâs* ſhould not have been given.

In a ſimilar caſe, if the hired ſervant reſide at a diſtance, and the maſter die after ſending thirty-one *mudrâs* by a meſſenger; when the exceſs of nine *mudrâs* above his due becomes known, if the meſſenger and ſervant *both* wiſh to take it, and the king neglect *to claim* the money, who ſhall obtain it? It ſhould not be argued, that, becauſe the whole money is delivered to the ſervant, he is entitled to take it; but the meſſenger can have no pretenſions to it. The ſervant, having no acknowledged property in the ſurplus, cannot take it, ſince it is a depoſit for delivery in the hands of an intermediate perſon; and if the meſſenger, computing the ſum by miſtake, cauſed the exceſs to be paid, then it is gained by his act. Theſe lawyers anſwer, it may be ſo.

But others hold, that the act reſpecting the nine *mudrâs*, which exceed his due, partakes not of the nature of theft; becauſe, the owner not exiſting at the time of the receipt, they are not ſtrange property. Nor is it a payment of *wages or* hire, for it was not regular to give ſo much. Therefore this is a ſemblance of gift; and whomſoever that intends, in him it veſts *ſeeming* property. Afterwards, when it is proved by a plaintiff to be only the ſemblance of a gift, that title is deveſted, like the property in ſtolen goods. This ſhould be eſtabliſhed, as ſhown by the practice of the beſt men. It is not ſeen among good cuſtoms, that the king, on failure of heirs, ſhould, after the death of the giver, take pro-

perty

perty given to an improper perſon; or that any perſon whoſoever may take it, if it be neglected by the king. Seizing it forcibly, he does not obtain what is thus acquired by robbery. To this opinion the beſt authors aſſent; and their aſſent is conſiſtent with common ſenſe. If it be aſked, what proof is there of relative property? the anſwer is, that right is veſted by inconſiderate volition.

But that is barred by the ordinance, "what has been given by "miſtake, or through any fraudulent practice, muſt be conſidered "as ungiven" (LIII 1). It ſhould not be argued, that the ordinance only ſhows the ſubſequent revival of the donor's title; for it is difficult to eſtabliſh the ſuppreſſion of relative property intermediately veſted. This is denied; for it is, on the other hand, difficult to annex abſence of miſtake, or the like, as a requiſite condition of veſting property by the will of the donor.

If the difficulty of proving the revival of the donor's title, and the ſuppreſſion of relative property, be retorted, the anſwer is, in a caſe where it is doubted whether there be or be not difficulties ariſing from very minute and logical diſtinctions, (as in the caſe of ſemblance of property,) the ſuppreſſion and revival of the donor's title ſhould be admitted, in conformity with reaſon. In the caſe of robbery, this difficulty is raiſed by the Sages themſelves: but if the law, as propounded by them, muſt in that caſe prevail, even then, ſince civil ordinances are grounded on reaſoning, ſuch a conſtruction ſhould in this caſe be ſet forth: and it is indeed proper; for a rule expreſſes, that "a principle of law, eſtabliſhed in one inſtance, ſhould be extended to other *ſimilar* caſes, provided there be no impediment." The ſuppreſſion of a property intermediately veſted may be eſtabliſhed in this inſtance; for it would be contrary to reaſon that a robber ſhould have property in what he has ſeized againſt the will of another, and that *a donee ſhould have* none in what has been given by the owner. If the meſſenger knowingly deceive *the principal*, for the purpoſe of acquiring the property himſelf, it is a theft on his part: to affirm that the thing becomes his, would be improper; for, if any criminal, liable to be puniſhed by the king, apply to a principal officer of the realm to ſave him from that puniſhment, and be told, "I will ſave thee by giving a hundred *mudrás* to the king's miniſter;" and that officer, taking the money, ſave the criminal,

influencing

influencing the king's miniſter by verbal perſuaſion; when the circumſtance becomes known, the criminal, from his want of power, cannot recover the money; but the king's miniſter, (alleging, "this was given for me, why do you take it?") may reaſonably exact it from that officer. Here the reaſon of the law, as above mentioned, is pertinent.

"Minor" (LIII 2) is *a term* employed indefinitely, and comprehends a decrepit old man. This CHANDESWARA, MISRA, and others, expreſsly declare. "Idiot" is explained by CHANDESWARA, naturally deſtitute of power to diſcriminate what may and may not be done. By inſerting "naturally," the word minor would not by any means be rendered unmeaning. Of what uſe is that inſertion *in explaining idiot?* "Minor" ſhould not therefore be limited to age; and "idiot" ſhould be otherwiſe explained. According to its etymology from the verb *muh* be ſtupid or want ſenſe, *mūd'ha* ſignifies ſtupid or fooliſh; and thence may ſignify unknowing: conſequently, where a man gives any thing ignorantly, the gift is void. For inſtance, a *Brâhmana*, ſuppoſing that kine may not be attended by a man of the ſacerdotal claſs, becauſe it is the duty of a *Vaiſya*, has given away his cow to ſome perſon; afterwards, diſcovering that a *Brâhmana* may attend kine, (for no law forbids it,) the donor ſays, "I gave you the cow through ignorance, therefore reſtore her;" in that caſe the gift is void, and *the cow* muſt be reſtored.

If it be ſaid, the gift is not void; then the perſon who retains all that is *given* by miſtake would be innocent; for there is a contract of donation; what difference is there between a thing given through miſtake reſpecting himſelf, and through miſtake reſpecting the gift? As a payment of fifteen *juvernas*, where ten *juvernas* ſhould be paid, is void, ſo the gift is utterly null where the whole ought not to have been given. Thus ſome expound the law. But that is wrong; for it would fall under the deſcription of things given inadvertently or by miſtake. In fact it is not expreſsly ſaid by any author, that, in ſuch a caſe, the gift is void: and we do not admit *the inference;* for it is irregular to aſſert, in a doubtful caſe, that the act done is null.

In the caſe of an erroneous payment of wages, *the exceſs* muſt neceſſarily be reſumable; for, in the payment of wages, abſolute

gift

gift is not contemplated. It ſhould not be objected, that, in the caſe *ſtated*, the donation is void, becauſe there is no ſuch duty as is the declared motive of relinquiſhment; namely, not to attend kine. Without intending *ſuch* dereliction, the gift may be valid, becauſe there is the intention of making a gift transferring property to another, and a benefit to him is deſigned: conſequently, where a thing is relinquiſhed on a miſtaken motive for dereliction, it may be reſumed; where it is given on a miſtaken motive for relinquiſhment, it cannot be withdrawn; but where it is given on a miſtaken motive for donation, it may be retracted. This rule coincides with our opinion.

Where a king, from the miſtaken ſuppoſition that the partition of a kingdom is forbidden, gives his dominions to one ſon, it is not fit that the gift be reſumed, on proof brought by the other ſons, from law or cuſtom, that partition of kingdoms is not forbidden: for his motives in making the donation are to confirm the kingdom to his ſon, and avoid partition; and his motive for avoiding that is the ſuppoſition that a kingdom is indiviſible. Though he do not miſtake, *it does follow that* partition may not be omitted; for the *kingdom* is *thereby* perpetuated: to ſet aſide a gift already made, it muſt be proved that all had ownerſhip, *but in this caſe* the reſt had no prior title to *claim* partition; *the poſſeſſor* himſelf may legally omit it; and the avoiding of it, which is the motive of the gift, preſerves the kingdom to the ſon: and the donation is not void, where the motive is *founded in* fact. It ſhould not be objected, that, by removing the grounds for avoiding partition, and by thus ſhowing its legality, the motive of the gift, *which was made* to avoid it, is rendered null, and the donation is *therefore* void. Although the thought that partition has been forbidden, which is the motive for avoiding it, be erroneous, ſtill the diviſion of certain property dependent on another perſon is not legal without the will to divide it and the act of making a diſtribution; and the motive of the gift *made* to avoid partition cannot be evaded. But in the caſe of the ſemblance of gift, ſince the act originates in error, that act of volition is unheeded: the property of the donee is deveſted without conſideration of perſons. After much diſcuſſion, the queſtion may be determined by the wiſe.

Others interpret "idiot" one whoſe mind is alienated through the

the influence of witches or the like, or who is deprived of ſenſe through the influence of a particular act *(namely ſorcery)*.

" A perſon not his own maſter;" a ſon, ſlave, or the like: ſo VÁCHESPATI-MISRA, CHANDÉSWARA, BHAVADÉVA and VÁCHESPATI-BHATTACHÁRYA.

Here ſome remark that MISRA and the reſt have not explained the term as denoting one who is not owner, but have explained it " ſon, ſlave, or the like;" by which it is denoted, that their meaning is this: a gift made by a perſon technically denominated not his own maſter, is void. Perſons ſo denominated are deſcribed by NÁREDA, as cited by VÁCHESPATI-BHATTÁCHÁRYA (XV). If there be an unſeparated brother, ſenior by age and virtue, and occupied in maintaining the whole family, a younger brother has no power to give or ſell either ſhare of the whole joint eſtate; therefore the gift or ſale is void: but, a contract made by ſuch an elder brother is valid for both ſhares.

LV.

VYÁSA:—But, at a time of diſtreſs, for the ſupport of his houſehold, and particularly for the performance of religious duties, even a ſingle coparcener may give, mortgage, or ſell the immoveable eſtate.

However, the younger brother has power over his own acquired property; his want of power will *hereafter* be limited to particular ſorts of property: and here it muſt be ſo eſtabliſhed from the reaſon of the law. But, if the brother be ſenior by age alone, his gift of the joint eſtate is good for his own ſhare only.

" All ſubjects are dependent" (XV 2): land or the like given by ſubjects, with the king's conſent, is a valid gift; ſo, if a corrody be granted by a wealthy man, the gift of it, with his aſſent, is *valid*.

" A pupil is declared dependent" (XV 2): the pupil is ſubject to control, becauſe the teacher ſhares the fruit *of* his *actions*, (Book III, Chap. I, V. 13 & 17;) and what a pupil, who is maintained by his teacher, gives to another without the aſſent of

of his inſtructor is not legal; for he is dependent in regard to all acts generally. It is meant, that even a trifling gift is void.

Women and the reſt being dependent in all actions generally, even the gift of female property and the like, without the aſſent of the huſband or maſter, is not valid.

LVI.

MENU :—Three perſons, a wife, a ſon, and a ſlave, are declared by law to have *in general* no wealth excluſively their own; the wealth which they may earn is *regularly* acquired for the man to whom they belong*.

Perſons not their own maſters, are ſons, ſlaves, and the like: this ſuppoſes property belonging to the ſon, ſlave, and the reſt; for the gift of that which belongs to the father or maſter is void, becauſe it is made without ownerſhip (Chapter II, v. XXVII).

Again; by declaring the dominion of women over female property, it is ſhown that the gift, *made by the huſband*, is void; and the alienation *of other property* is void, becauſe the wife has a title to the huſband's eſtate (Book V, v. CCCCXV); and the ſon has ownerſhip in the paternal eſtate during the life of the father (XXXI); but this (LVI) muſt be underſtood of property acquired by the wife, ſon, or ſlave. "A houſeholder is not independent, &c." (XV 3); the father has not power to give or alienate, for civil purpoſes, gems, pearls, land or the like, which have deſcended from anceſtors, nor immoveable property even though acquired by himſelf (XIV).

Thus they interpret the law: but that is not ſatisfactory; for it has been already anſwered. The gift even of the immoveable patrimony, for religious purpoſes, is valid without the aſſent of ſons and the reſt; for excellent uſage has legalized *ſuch donations*, and no particular ordinance is found on this point: neither VIJNYÁNÍSWARA, nor any other author, expreſsly declares that property inherited from the paternal grandfather, and given by

* See Book III, Chap. I, v. 52.

by the father without the aſſent of the ſons, is a void gift. Thus, in explaining the text, "the father and ſons have equal dominion, &c." (XXXI), VIJNYÁNÉSWARA ſays, the ſon may oppoſe a father attempting to give away property inherited from the paternal grandfather. Therefore, perſons not their own maſters, as a ſon, ſlave, or the like, are mentioned becauſe they are nearly connected with the owner; it might *on that account* be doubted whether their gifts be valid: there can be no queſtion whether a gift made by a ſtranger be good in law; therefore it has not been noticed.

"One inſane" is not in his natural ſtate. A gift made by an outcaſt is void, becauſe property is forfeited by degradation. "In conſideration of work unperformed:" what a man gives, deceived by the promiſe of the donee, "I will execute this buſineſs for thee, give me a reward," is not a valid gift if the work be unperformed: and this relates to the payment of wages. So in regard to a gift in expectation of a grateful return.

If ſome perſon, having no iſſue, tell any man related or not related to him, "I give thee all my property, and thou ſhalt "perform the laſt duties for me;" but the land or the like be afterwards occupied by the donor; what is the rule in regard to the validity of the gift? Without occupancy, the donation cannot be valid: but if the donee reply, "I give this to preſerve the "aged giver from poverty;" not, "I relinquiſh this;" then the gift is valid on proof of occupancy. The donation is null, if the conſideration be void; the ground for invalidating the gift is the failure of *any* part of the declared purpoſe.

Here an obſervation ſhould be made. If it be aſked, what is the rule, in the caſe where ſome conſiderations, ſuch as maintenance for life and ſo forth, are performed; and ſome conſiderations, ſuch as the funeral rites are not performed? *the anſwer is*, the gift is void, becauſe the donee's agreement is broken by not performing the whole contract, and becauſe there is a failure in ſome part of the declared purpoſes.

In the *Mitácſharâ* the diſtinction is declared between a diſeaſed man and one agitated by *the pain of* a diſeaſe: "a diſeaſed man," afflicted with any diſeaſe; "agitated by pain," afflicted with an incurable diſeaſe. If it be leproſy or the like, the man afflicted with that diſtemper has not ownerſhip in the eſtate; but if the

giver

giver have ownerſhip, it is not conſiſtent with reaſon that the payment of wages or the like ſhould be void. Nor is it proper to ſay, that this prohibition regards only what is given from friendſhip; for there is no ſuch limitation of the law. This and other points ſhould be conſidered.

But others explain "agitated by pain," afflicted with a diſtemper which deſtroys ſenſe, as a complicated marafmus or the like; and "a diſeaſed man," one whoſe ſenſe has been deſtroyed, without ſuch a diſtemper, and without intoxication, but by ſwallowing pernicious drugs or the like.

BHAVADÉVA, CHANDÉSWARA, and VÁCHESPATI remark, that a gift made for religious purpoſes, even by a diſeaſed man, is valid (III). This ſhould be admitted, and is meant by JÍMÚTAVÁHANA, RAGHUNANDANA, and others: but there is no queſtion on the validity of gifts for religious purpoſes, ſince NÁREDA *limits* the rules to civil donation (II 2); and this text (III) is quoted by MISRA under the title of Loans and Payment, and is explained by us, in the firſt book, as applicable to the ſubject of the payment of debts.

In fact, as rich and eaſy ſignifies poſſeſſing wealth and tranquillity, ſo the text muſt be acknowledged to ſignify, that gifts made by perſons in the circumſtances deſcribed, (agitated by fear, &c.) are void. A gift made by one influenced by avarice is valid, if the profit be obtained; elſe it is void: but a donation made without ownerſhip is always null. Gift *or delivery of things* as wages, for pleaſure, for purchaſe, as a nuptial fee, as a grateful return, as a preſent to a worthy man, from natural affection, or from friendſhip, are valid *and irrevocable*. Hence, what is given for a declared religious purpoſe, even in ſickneſs, is not invalid; for, CHANDÉSWARA holds, that a preſent to a worthy man is a gift for a religious purpoſe; and it is excluded from void donations. Even a minor makes preſents on the eleventh day after his father's death; though given by a minor, they are *legal* gifts: his ſenſe being unripe, the donation may be made by inſtructions from others, as he is taught to play at ball or the like. A gift may be made even by a perſon who is not his own maſter: thus, any man having authority over him may cauſe him to give the thing for a neceſſary purpoſe; ſo, in other caſes: but a payment of wages or the like, by a man agitated

tated by anger or the like, is valid, provided his mind be tranquil during that act and at that time; otherwiſe it is not, for contracts are univerſally forbidden during a ſtate of inſanity or the like (LIV).

LVII.

MENU:—A contract made by a perſon intoxicated, or inſane, or grievouſly diſordered, or wholly dependent, by an infant, or a decrepid old man, or, *in the name of another*, by a perſon without authority, is utterly null.

LVIII.

YÁJNYAWALCYA:—A contract made by a perſon intoxicated, or inſane, or grievouſly diſordered, or diſabled, by an infant, or a man agitated by fear or the like, or, *in the name of another*, by a perſon without authority, is utterly null.

Since there are no other texts of MENU and YÁJNYAWALCYA explaining illegal donation, the enumeration of void gifts muſt be taken from theſe. Singly, the gift of wages by a man poſſeſſing his ſenſes is valid; joined with madneſs or the like, the intentional payment of wages during a lucid interval *may alſo be valid*; but ſingly, a gift by a man affected by inſanity or the like is void. Such is the meaning.

If the validity of gifts made in conſideration of duty, notwithſtanding ſickneſs, be intended by authors; then a ſimilar donation, by an inſane perſon, may be valid, from parity of reaſoning, in the want of poſitive texts. This and other points ſhould be determined.

MISRA obſerves, that gifts from an impulſe of luſt or anger have been explained in the caſe of Loan and Payment; and after premiſing the words 'in fact,' he inſerts the text of CÁTYÁYANA (Book I, v. CCIV).

What is the rule in regard to things given by an indolent man or the like, or by a weak man and ſo forth; for both are omitted? If extorted by fear or the like, the gift is void; if that do not attend the donation, it is valid. In fact, a gift attended with any defect is void; but a donation ſpringing from a *ſufficient* motive is valid.

An obſervation ſhould be here made. If it be aſked whether a commodity ſold, and a loan advanced, be ſtated in the number of irrevocable gifts, or in the number of void donations, and what is the rule reſpecting them; *the anſwer is*, the one might be comprehended under the term *which has been explained* the price of a commodity ſold, *for it may mean* a commodity receivable for a price; and the intereſt of a loan may be *deemed* a preſent given as an acknowledgment to a benefactor, but regulated by the law. Or what is declared by ordinances concerning loan and payment, may be added to the number of irrevocable gifts, under the remark of CHANDÉSWARA, "it is not implied that one *text* curtails another."

CÁTYÁYANA explains *utcócha* or bribe.

LIX.

CÁTYÁYANA:—Whatever is received for giving information of a thief or a robber, of a man violating the rules of his claſs, or of an adulterer, for producing a man of depraved manners *ready to commit theſts or other crimes*, or for procuring a man to give falſe teſtimony,

2. That is all denominated *utcócha*, or *given on an illegal conſideration*: the giver ſhall not be fined; but an arbitrator or intermediate perſon, *receiving a bribe*, ſhall be held guilty.

When theft and violence are both committed, the offender is "a thief and robber." "A man violating the rules of his claſs;" an outcaſt: CHANDÉSWARA explains the terms ſimilarly. What is promiſed to the perſon who produces a thief, a robber,

robber, an outcaſt, an adulterer, or a man of depraved manners, or to a perſon who ſuborns falſe teſtimony, is called *utcôcha:* the ſame *authority* expreſsly declares, that, if promiſed, it ſhall not be delivered; if given, it ſhall be reſumed.

LX.

CÁTYÁYANA:—If a bribe be promiſed for any purpoſe, it ſhall by no means be given, although the conſideration be performed:

2. But if it had at firſt been actually given, it ſhall be reſtored by forcible means; and a fine of eleven times as much is ordained by the ſon of GÁRGA and by the ſon of MENU*.

A bribe promiſed, as the recompenſe of an evil act, ſhall not be given, though the conſideration be performed.

Utcôcha, or *utcòcha*, is of both genders, *(maſculine and feminine,)* as ſhown in two different texts.

If it had been firſt received, and the information afterwards given, it muſt be reſtored. In this explanation, MISRA, CHANDÉSWARA, and the reſt, concur. If he refuſe to reſtore it, he ſhall be compelled by forcible means, and a fine ſhall in this caſe be impoſed: and that penalty is fixed at eleven times as much as was promiſed. So CHANDÉSWARA.

Whom does the fine concern? The receiver of the bribe. That the giver (the perſon who obtains ſecret information by the diſburſement of money) ſhould be fined, he denies in the former text, "the giver ſhall not be fined." But if an arbitrator *or intermediate perſon (for the word has both ſenſes)* receive a bribe, he ſhall be puniſhed. Herein the *Vivâda Chintâmeni* concurs. In fact, if one be concealed, and another ſearch for him, the intermediate perſon, deluded by a bribe, and producing him, ſhall be held guilty. CHANDÉSWARA explains it, "the intermediate "perſon and he who cauſes the bribe to be given ſhall not be "puniſhed, but the receiver ſhall be fined eleven times as "much." His meaning is, that the giver, or perſon who cauſes

* Another reading gives the name of GA'LAVA.

the bribe to be given, and the intermediate perſon employed, ſhall not be fined.

" According to the *Vivâda Chintámeni*, the *privative* A is inſerted; *aſatya*, falſe *teſtimony*. But ſome read *ſatya*, or true *teſtimony*. Truth muſt neceſſarily be ſpoken even without wages: but if a man, receiving hire, or the promiſe of it, give true teſtimony, it is proper he ſhould reſtore the money, becauſe it has been received for a buſineſs in which wages are improper. But he who from avarice conſents to act diſhoneſtly in giving falſe teſtimony, ſhould not be compelled to reſtore what he receives, becauſe it is the price for which he ſells his honeſty. Thus they interpret the text. But the reading of the *Vivâda Chintámeni* tends to maintain honeſty: thus, if the practice ſuggeſted by ſuch an ordinance be duly enforced, none would receive a bribe to procure falſe teſtimony, provided the promoter of a falſe ſuit conceal it not.

Others ſay, what is given for a falſe accuſation of theft, or for the diſcovery of depraved manners, or to procure falſe teſtimony, may be reſumed; and, if promiſed, it ſhould not be delivered. On the queſtion whether the giver ſhall, or ſhall not, be fined, (for he might be amerced, ſince he commits an offence,) the text declares, "he ſhall not be fined." Since a falſe accuſation is infamous, there might be ſome amercement impoſed on the ſuborner as guilty of an offence; but the law has excuſed the fine. The intermediate perſon between the accuſed and the ſuborner, preferring the accuſation from a motive of avarice, ſhall be fined: or, *according to another conſtruction*, he ſhall not be amerced; that is, he ſhall not be fined in an equal amercement; *but* he ſhall pay a quarter leſs *than the amercement mentioned in another place*, for he is guilty of an offence. The grounds on which the bribe is reſtored, are, that the gift is made for the purpoſe of deluding: what is the rule if it be given in earneſt? It ſhall not be reſtored, for it is given by an owner who is his own maſter. But what is given or promiſed for the purpoſe of deluding, is not good in law. "If a bribe be promiſed for any purpoſe &c." (LX); this means what any perſon, ſolely conſidering the accompliſhment of his purpoſe, promiſes for the ſake of deluſion: and this ſhould be underſtood of buſineſs for which wages are not proper.

LXI.

LXI.

CÁTYÁYANA :—What has been given by men under the impulſe of luſt, or anger, or by ſuch as are not their own maſters, or by one diſeaſed, or deprived of virility, or inebriated, or of unſound mind, or through miſtake, or in jeſt, may be taken back.

"One diſeaſed;" affected with diſeaſe and the like, or impelled by hunger and ſo forth. A gift made by one deprived of
† virility is void, for he has not power over the family-eſtate: but if he give away what he himſelf acquired, the gift is valid. It is not *directed*, that one deprived of virility, buying a commodity, ſhould not pay the price; *but*, *in regard to* what is given through friendſhip, *it* is conſiſtent with reaſon.

"Of unſound mind;" naturally incapable of diſtinguiſhing right from wrong; or whoſe mind is alienated in conſequence of diſeaſe, or of *magical* arts; or who is deluded by a promiſe in this form, "I will perform this work for thee."

By ſaying, "it may be taken back," the gift is declared void. Donations made under the influence of grief or the like, or by a minor, muſt be underſtood from the concurrent import of this text with that of NÁREDA (LIII).

LXII.

VRÍHASPATI :—What is given by a perſon in wrath or *exceſſive* joy, or through inadvertence, or during diſeaſe, minority or madneſs, or under the impulſe of terror, or by one intoxicated or extremely old, or by an outcaſt or an idiot, or by a man afflicted with grief or with pain,

2. Or what is given in ſport; all this is declared ungiven, or void.

3. If any thing be given for a conſideration unperformed, or to a bad man miſtaken for a good one, or for any illegal act, the owner may take it back.

A gift made through inadvertency, cauſed by joy, is not void; but what is given without diſcrimination, the mind being diſturbed by exceſſive joy, *is invalid:* or it may be underſtood of what is given through joy originating in luſt. Inadvertency or miſtake have been already explained. "Extremely old;" one whoſe organs of ſenſe are impaired: ſo MISRA. "Outcaſt;" baniſhed for his crimes: the term is ſo explained in the *Retnácara.* "An idiot;" the term is interchangeable with *mú'd'ha* already explained. "Given in ſport," or in play: ſo the *Retnácara.* The word is ſynonymous with that which has been already explained, "given in jeſt."

"Given for a conſideration;" in expectation that the donee will perform ſome work: if the conſideration be not performed, the gift is void. "To a bad man," (or to any unworthy man;) as the gift of gold to a man of the ſervile claſs; or a preſent to a vicious prieſt, where the declared intention was to give it to a virtuous prieſt; for the text expreſſes, "miſtaken for a good one." However, what is given to an unworthy man, but without diſtinguiſhing whether it be intended for a worthy perſon, or not, is valid; for it is declared that every donation produces fruit, and none is declared univerſally unworthy of gifts.

LXIII.

MENU:—A gift to one not a *Bráhmana* produces fruit of a middle ſtandard: to one who calls himſelf a *Bráhmana,* double; to a well-read *Bráhmana,* a hundred thouſand fold; to one who has read all the *Védas,* infinite.

LXIV.

Uncertain:—Gifts are ever deemed virtuous, even though

though preſented to a *Swapáca* or the like, but eſpecially if given at a proper time and place, in proper form, and to a worthy man.

Theſe texts cannot be ſaid to relate to the gift of food; for there is no ſuch limitation. The expreſſion, " ſtone tranſports, not ſtone over the deep," is intended as praiſe of men who deſerve gifts.

" To a perſon who calls himſelf a *Bráhmana ;*" who ſays, " I am a *Bráhmana ;*" but *in fact* belongs not to the ſacerdotal claſs: and he muſt neither be vicious, nor degraded. " Ever," at all times, and in all countries, " gifts are virtuous," or productive, even though preſented to a *Swapáca*, (a mixed claſs equal in degree to the *Chán'dála,)* that is, preſented to any perſon: but eſpecially if given " at a proper place," in a country frequented by the black antelope, or on the banks of the Ganges or the like; " at a proper time," during an eclipſe of the ſun or moon; " in proper form," looking towards the eaſt, delivering *cuſa*, *tila*, and water, and ſo forth; " to a worthy man," to one who has read all the *Védas*, ſuch gifts " eſpecially " produce fruit; they produce the greateſt reward.

" For any illegal act;" from this expoſition of CHANDÍS-WARA, compared with the gloſs of CULLÚCABHATTA on the text of MENU (XLVIII), " if the man aſking a gift for ſome religious act do not perform it, the owner may reſume a gift thus applied to a purpoſe different from a religious one," his *meaning* may be thus ſtated, " for an act not religious:" for he admits ſuch an explanation of the text formerly quoted from GÓTAMA. Conſequently, if a man aſk and receive a gift for a religious act, or for conſumption, and give it to a harlot, the donation is void.

What is given for a falſe accuſation of adultery is a void gift: what NÁREDA and CÁTYÁYANA call a bribe, or *utóchu*, is explained, according to the texts of other *Sages*, given for an illegal act. But this appears wrong; for that cannot be eſtabliſhed in a text of NÁREDA to the ſame purport.

LXV.

NÁREDA :—But what ſhall be given ignorantly to a bad man, called a good one, or for an illegal act, muſt be conſidered as ungiven.

From the term "ignorantly," and from the word "but," it appears that this text does not ſet forth the invalidity of a gift delivered as a bribe for an accuſation of adultery ; and there is no difficulty in ſaying that the text of VRĬHASPATI relates to the ſame *ſubject*.

If that for which the gift is made be not *performed*, *the giver* may reſume it : ſo the *Vivâda Chintâmeni*. Conſequently, if a man, ſaying, "I will give it to dancers," do not ſo appropriate the gift, it may be reſumed : but, the matter being trifling, a generous giver will not reſume it. Such is the cuſtom.

All theſe opinions ſhould be admitted : but it muſt be conſidered, that, ſince the text laſt cited expreſſes "what is given to a bad man called a good one," it would be elegant in the former text to limit "miſtake" to the thing to be given ; elſe there is a vain repetition.

LXVI.

GÓTAMA :—The words of a man influenced by wrath, exceſſive joy, terror, ſickneſs, or avarice, or of a minor, of a decrepit old man, of an idiot, or of one intoxicated or mad, are vain.

LXVII.

NÁREDA :—He who fooliſhly receives what is *deemed* ungiven, and he who gives what may not be *legally* aliened, ſhould be puniſhed by a king, who knows the law.

Void

Void gifts of ſixteen forms, as mentioned by NÁREDA; and unalienable property, of eight ſorts, as declared by the ſame.

The *Retnácara.*

The caſes mentioned by other Sages ſhould alſo be admitted: and what is extorted by force is likewiſe conſidered as ungiven (Chapter II, V. 10); and that is comprehended, in the text of NÁREDA, under gifts through fear.

A fine is ordained for him who gives what may not legally be aliened, not for the receiver; therefore it is not inferred that it ſhould be reſtored. It follows, that a gift of what *regularly* ſhould not be aliened, is nevertheleſs valid. If any one give away joint-property, another owner comes and ſays, "what power had he to give the whole? reſtore therefore my ſhare." He cannot ſay, "reſtore the whole eſtate." Such is the uſage ſeen in practice: but cuſtom is derived from the ancients, *who were* verſed in the law; it cannot therefore be forcibly abrogated. But in ſome inſtances cuſtom has been partly changed by ſelf-authorized moderns, who pretend to wiſdom, and neglect the law. To reconcile it, reſpect ſhould be ſhown to the rules of juriſprudence, obſerving alſo time and place.

LXVIII.

MENU:—Let him fully conſider the nature of truth, the ſtate of the caſe, and his own perſon; and, next, the witneſſes, the place, the mode, and the time; firmly adhering to all the rules of practice.

Let the king, inſpecting judicial proceedings, detect fraud, and view the truth; let him conſider "the caſe," or what belongs to it, (for the term may be taken as a derivative bearing this ſenſe;) that is, the forenſick practice reſpecting ſuch things, whether cattle, gold, or the like: *let him avoid* trifling errors, leſt he be derided for his want of ſagacity; and let him conſider his own perſon, *remembering that* by juſt deciſions he will partake of celeſtial bliſs, and ſo forth: let him conſider the witneſſes, *whether they* be obſervant of truth, *or not:* let him conſider the place and time, whether they be ſuitable; and the form, whether the

the point conteſted be in its nature probable or improbable, and ſo forth. CULLÚCABHATTA.

Others thus explain the text: let him conſider the truth; "this man ſpeaks truth; that man ſpeaks deceitfully:" let him decide the matter, detecting fraud and ſo forth. The ſame is intended by CULLÚCABHATTA. Let him conſider the wealth *of the party;* his aſſets for *the payment of* a fine: conſequently the meaning is, that an amercement ſhould be impoſed according to the ability *of the offender.* Let him conſider "his own perſon;" let him reflect, "who am I?" I who am appointed by the ſupreme ruler to diſcriminate juſtice and injuſtice, have no other friend; neither the accuſed nor the accuſer *is a friend to be treated* with partiality. This is alſo intimated by CULLÚCABHATTA. *Let him conſider the witneſſes;* let him confront and examine them, to aſcertain whether they ſpeak from contrivance, or relate the fact. Let him decide the matter by incidentally inveſtigating the place and time, and ſo forth: in what place, and in what occupation, to approach the wife of another is a high offence; let him inveſtigate all that, to impoſe the ſevereſt fine for *an offence* committed in that place and in that occupation. Again; ſince criminals, deſerving capital puniſhment, are numerous in times abounding with iniquity, the depopulation of the realm might be apprehended; in that caſe, inſtead of capital puniſhment, let him confiſcate the whole eſtate *of the offender,* command *ignominious* tonſure, and inflict other puniſhments, according to the nature of the offences, including theft. Let him conſider "the form," or nature of the acts: even if the act be proved to have been *done in* jeſt or the like, he muſt inſpect the judicial proceeding.

BOOK III.

ON THE

NON-PERFORMANCE

OF

AGREEMENTS, &c.

CHAP. I.

ON

THE NON-PAYMENT OF

WAGES OR HIRE.

SECT. I.—*On Servants and others bound to Obedience.*

I.

VRĬHASPATI:—Unalienable *property*, and other *titles of gift*, have been fully declared: the rules for Servants are now delivered; and, firſt, is propounded, the title of Promiſed Obedience;

2. Next, Non-payment of *wages or* hire; and, laſtly, Diſputes between maſter and herdſman in *their* order. This is the triple diſtinction of Servants.

This topick of *perſons* promiſing obedience, and of *ſuch as are* diſobedient, is a title of law. The *Chintámeni*.

Unalienable property, and other *titles of gift*, (what may or may not be given, and what is or is not a valid gift,) have been fully declared; next in order the law reſpecting Servants is delivered. What relates to him who promiſes obedience, but yields it not, is a title of law, as diſobedience and ſo forth: that is firſt propounded; the caſes are decided with penalties, as ſpecified in their proper place. "Next, non-payment of wages;" or withholding the hire of labour: afterwards, the diſputes between maſter and herdſman are declared in order: this *diſtinction*, of *dependent* bound to obedience, of *hireling* receiving wages, of ſervant (ſuch as herdſman) differently maintained, forms the triple diſtinction of ſervants. Such is the ſenſe *of the text*; conſequently, the rules reſpecting them, together with the conteſts between maſter and herdſman, form a ſingle title of law, according to VRĬHASPATI.

But other lawyers, finding in the *Retnácara* a different reading of the text of VRĬHASPATI, (*Aśuśrūſhábhyupétya*, inſtead of *Suśrūſhám abhyupaitya*,) ſay, that the title of Judicial Procedure is named *Aśuśrūſhábhyupétya*, a compound in which the laſt word is the ſubject, "diſobedience of him who has promiſed *obedience*;" for it is ſimilar to the compound *Rájadanta*, king of teeth, by the rule of CRAMADÍŚWARÁCHÁRYA; "in ſome other inſtances alſo *the ſubject is* placed laſt." NÁREDA likewiſe ſo *denominates this title of law*.

II.

NÁREDA:—When a man yields not the obedience he has promiſed, it is called a breach of promiſed obedience, which is a title of law.

Literally, that man who, promiſing obedience, yields it not, is named by the forenſick term of "not obedient as *he had* promiſed;" or his breach of duty is a title of judicial procedure called *(Aśuśrūſhábhyupétya)*, diſobedience of him who has promiſed obſervance: conſequently, the appoſition *gives this ſenſe*, "his title of law is," inſtead of "it is a title of law." They thus explain the laſt verſe (1 2), "the diſtinct rules reſpecting ſervants,

ſervants, (under the heads of breach of promiſed obedience, non-payment of wages or hire, and diſputes between maſter and herdſman,) form the triple diſtinction of laws reſpecting ſervants and wages."

The title of law reſpecting him who, promiſing obedience (or compliance with commands), afterwards yields it not, is called *(abhyupétyáśuśruſhá)* promiſe and diſobedience.

The *Mitácſharâ*.

In fact, the words do not form a compound: conſequently the ſenſe of VRĬHASPATI's text is, "the promiſe and diſobedience are firſt propounded; and thereon reſts a double *ſubject of* conteſt." He mentions it, "wages, &c." non-payment of wages, and diſputes between maſter and ſervant, are delivered in their order: "this, which will be mentioned, is the triple diſtinction of ſervants;" namely labourer, ſlave, and herdſman. The ſenſe of NÁREDA's text is the ſame: neither is there any *needleſs* repetition; for in the firſt hemiſtich the title of law is not named. Nor is there any thing ſuperfluous in it; for it is ſtated by way of example: the firſt hemiſtich deſcribes the perſon implied by the name aſſigned in the ſecond; and it is intended to exclude accidental diſobedience. The text ſhould be thus interpreted:

III.

NÁREDA deſcribes ſervants:—Perſons bound to obedience are in law declared by the learned to be of five kinds; four are ſervants or labourers; the reſt, namely the ſlaves, are *of* fifteen *ſorts*.

But in the *Mitácſharâ* it is read; "among thoſe the ſlaves are fifteen*." The ſenſe is, perſons bound to obedience are ſervants of five kinds; four are labourers; the other, called ſlave, is of thrice five, or fifteen *ſorts*. VIJNYÁNÉSWARA, VÁCHESPATI MISRA, and others, ſo *explain the text*.

IV.

* *Téſhám*, inſtead of *Séſháh*.

IV.

VRĬHASPATI :—They are declared to be of many ſorts, according to claſs and work; and four-fold for ſcience, for human knowledge, for love, or for pay.

2. Of theſe again, each is diſtinguiſhed according to the difference of work.

They (ſervants) are declared to be of many ſorts. How? According to claſs and work; according to the diſtinction of tribes and of labour. He mentions the diſtinctions of work; "ſcience, &c." "Science;" knowledge of the *Vĕdas* and the like. "Human knowledge;" ſkill in arts and the like, explained in the Dictionary of AMERA, arts and ordinances, *or human ſciences*. "Love;" *becoming a ſervant* through the influence of love. "Pay," *literally* wealth; that is, money or goods. According to the diſtinction of labour for theſe cauſes, ſervants are diſcriminated; theſe four kinds are again diſtinguiſhed according to the difference of work: all this will be explained.

V.

NÁREDA :—A pupil, an apprentice, a hired ſervant, and fourthly a commiſſioned ſervant, perform work; ſlaves are thoſe born *of a female ſlave* in the houſe, or the like.

"A pupil" is one who ſeeks *the acquiſition of* ſcience; an apprentice ſeeks *the acquiſition of* ſkill in arts; a hireling and a commiſſioned ſervant both ſeek pay. A ſervant "for love" is a ſlave of a particular deſcription; the other ſlaves are ſimilar to ſervants for pay. Thus the ſenſe is the ſame as in *the text of* VRĬHASPATI.

VI.

VI.

NÁREDA*:—The wife have declared their general dependence.

Here ſome explain dependence, or not being their own maſters, as denoting that they are incapable of acquiring wealth for themſelves. But others hold their dependence to mean ſubjection to a maſter; conſequently the ſenſe is, they commit a ſin, and ſhall be puniſhed as is proper, if they act without, or againſt, their maſter's commands: but there is no ordinance ſhowing univerſally the property of their maſters in what is acquired by them; but where and when it is ſhown by the law that ſlaves or others are incapable of property, even there and then what they acquire becomes the property of their maſters: and this mention of dependence is intended to determine conteſts reſpecting the independence of maſter and ſervant, or of teacher and pupil.

VII.

NÁREDA notices the diſtinction *of ſervants* by claſs:—He is called a labourer by claſs, and has a diſtinct ſubſiſtence.

The meaning is, whatever be the ſervant's claſs, he ſhould perform the work of it; and his ſubſiſtence *and abode* ſhould *alſo* be regulated by his claſs. For inſtance, the uſe of arms, and a habitation in the beſt place, for a *Cſhatriya;* clearing foreſts and the like, and a habitation in the worſt place, for the loweſt *Súdra.*

VIII.

VRÍHASPATI deſcribes the pupil:—The triple ſcience is declared to be the *Rích, Yajuſh,* and *Sáma-védas;* for

* Not named in the original, but the texts which precede and follow this are delivered as NA'REDA'S; and it ſeems to be implied that this alſo is quoted from the ſame authority. T.

for theſe let him pay obedience to a ſpiritual teacher, as directed by the law.

The *Ŕich* and other *Védas* are mentioned generally, comprehending the *Aṫ'harva-véda* and the like. "The obedience directed, or preſcribed, by the law;" conſequently, though it be not ſpecified, obedience is neceſſary; and he who yields it not, may be reproved or chaſtiſed by the teacher, and the preceptor offends not. For the ſake of ſcience, obedience to an inſtructor muſt alſo be yielded by others than a *Bráhmana;* for they ſtudy ordinances, *or human ſciences.* This muſt alſo be underſtood.

IX.

NÁREDA: — Until he acquire the ſcience, let the pupil diligently obey his preceptor; his conduct ſhould be the ſame towards the preceptor's wife and his ſon:

2. *Afterwards*, performing the ſtated ceremonies on his return home, and giving to his inſtructor the gratuity of a teacher, let him return to his own houſe. This conduct is preſcribed to the pupil.

By this a pupil is declared to be a ſervant. The *Retnácara.*

Here the puniſhment of a pupil, if he do not yield obedience, is not ordained: hence, ſince it is not here directed, no amercement is *paid* to the king.

X.

Smŕiti:—But in caſe of ſtrife between teacher and pupil, father and ſon, huſband and wife, or maſter and ſervant, their mutual litigation is not legal.

By this, judicial procedure, *in ſuch caſes,* is not forbidden*; but MENU declares that puniſhment may be inflicted by the teacher (XI).

* I ſuſpect the negative to be an error of the manuſcript. T.

(XI). It appears that, if it could not be borne, the acquiſition of ſcience would be prevented.

XI.

MENU :—A wife, a ſon, a ſervant, a pupil, and a younger whole brother, may be corrected, when they commit faults, with a rope, or the ſmall ſhoot of a cane*;

2. But on the back part only of their bodies, and not on a noble part by any means.

"Performing the ſtated ceremonies on his return home" (IX); performing the *Samávarttana* ſacrifice, and giving the teacher's gratuity, for the ſake of *obtaining* perfect fruit from his own act *of ſtudying*, let him return home to *aſſume* the order of a houſe-holder, *or married man*. Such is the ſenſe of the text (IX 2).

A pupil is mentioned under *this* title of law, to determine the rules reſpecting chaſtiſement of a pupil by a teacher, and ſo forth.

XII.

GÓTAMA :—The correction of a pupil for ignorance or incapacity *ſhould be given* with a ſmall rope or ſhoot of a cane; the teacher ſhall be puniſhed by the king, if he ſtrike with any other inſtrument.

VIJNYÁNÉSWARA ſays; if a teacher, from an impulſe of wrath, ſtrike *his pupil* with a great ſtaff on a noble part, then ſhould the pupil, hurt in a mode contrary to law, complain to the king; there exiſts a ſubject of litigation.

If it be ſaid, that this contradicts the text cited (X), VIJNYANÉSWARA replies; it is not intended to forbid important ſuits on the part of pupils and the like, for in ſome inſtances their ſuits

* May I quote a maxim of no leſs authority? *Setáparádhair anitám puſhpénápi ne tádyét*; ſtrike not, even with a bloſſom, *a wife* guilty of a hundred faults. T.

are admitted: but the litigation of teachers and the reſt is not laudable, either in a moral or civil view; therefore pupils and others ſhould, in the firſt inſtance, be diſcouraged by the king or the court: this is the implied ſenſe of the verſe (X). But, in very important caſes, the ſuits of pupils and the reſt may be entertained in the form mentioned.

But others hold, that the ſuit of a teacher againſt his pupil, a father againſt his ſon, a maſter againſt his ſervant, and, by parity of reaſoning, a huſband againſt his wife, is not legal, becauſe the pupils and the reſt are dependent on their teachers and ſo forth, and may be puniſhed by them: the text (X) ſhows this very *rule*, and does not forbid the ſuit of a pupil and the reſt againſt a teacher and ſo forth; for GÓTAMA directs, that a preceptor, ill treating his ſcholar, ſhall be puniſhed (XII). The text in queſtion (X) ſignifies, that the pupil ſhould proceed, *in other matters*, with the previous knowledge of his teacher. The meaning is, that a ſuit preferred before the king is irregular; and, preferred by the teacher againſt his pupil, is forbidden. But if the pupil, or ſon, violate his duty, and the teacher, or father, being weak, is not able to correct him, it is conſiſtent with common ſenſe that he ſhould then apply to the king; for, by violating his duty, the pupil, or ſon, abſolutely becomes *pâſhaṅda*, *or* irreligious*. This they *alſo* hold.

The ſuit of a teacher, if his gratuity be not paid, is not mentioned by any other *author*; but hell is *the pupil's fate*, if he pay not a gratuity *to his inſtructor* (Book II, Chap. III, V. 34).

From the text *already cited* (IX 2) *it appears, that* ſo long, *(until the ſtated ceremonies be performed,)* obedience is required, and the pupil is dependent on the teacher (V. vi, and Book II, Chap. IV, V. xv 2). Therefore he ſhould not go any where, nor conſume any thing, without his preceptor's orders; and what he acquires by labour, ſhould be delivered to the teacher.

XIII.

YÀJNYAWALCYA:—When called, let him ſtudy; and

* Literally, taking the marks of the four orders (as explained in AMERA'S Dictionary); but otherwiſe explained in this work (Chap. II).

and deliver what is gained to him (namely to the teacher).

What is given by him, may be conſumed; what is acquired by labour, may not be given to another: but, if *either* paternal wealth, or property acquired *by the pupil* during his minority, be given away, unknown to the teacher, or notwithſtanding his prohibition, it is *nevertheleſs* a valid gift; but there is offence in violating the prohibition.

Let him deliver what is gained to the teacher (XIII): this is a moral ordinance; for it is placed under that head. Conſequently, duty is violated if it be not delivered to the teacher; but he cannot forcibly take it: and ſince the pupil is the owner of that property, even what is then received as alms may, if the ſcholar give it away, be a legal donation. If this be alleged, they ſay, the ſame rule is eſtabliſhed in this caſe as in that of learning arts (XX); the pupil is like a ſlave to his preceptor, and during that period *of tutelage* is every way dependent. But according to JÍMÚTAVÁHANA and others, it ſhould be affirmed, that what is then acquired by labour, if it be given away, becomes a valid gift; for *the caſe* is ſimilar to *that of* a wife and the reſt.

The pupil muſt alſo perform other labour in his preceptor's houſe.

XIV.

YÁJNYAWALCYA:—Let him conſtantly promote his *teacher's* benefit, by *every exertion of* mind, ſpeech, body, and action.

And ſuch practice is ſhown, in many inſtances, in the *Mahábhárata* and other *works*.

XV.

YÁJNYAWALCYA:—Thoſe who are endowed with memory, and who are void of malice, intelligent,

 pure,

pure, and auſpicious, ſhould be legally inſtructed, that they may be juſt, able, acquainted with what is good, and learned.

From this direction it ſhould be deduced, that a pupil, endued with ſuch qualities, and free from ſuch defects, having undertaken to ſtudy, cannot properly be abandoned without a fault.

VIJNYÁNÉSWARA ſays, *treating* of the pupil, apprentice, hireling, and commiſſioned ſervant, the conduct of the pupil has been firſt propounded by the text *already quoted* (XIII).

XVI.

VRÍHASPATI deſcribes an apprentice: — Arts, conſiſting of *work in* gold, huſbandry, and the like, and *the art of* dancing and the reſt, are called human ſciences; let him who ſtudies theſe, perform work in his teacher's houſe.

In the expreſſion "gold, huſbandry, and the like," are comprehended *work in* wood, traffick, and the reſt. Dancing and the like include ſinging and ſo forth In the *Chintámeni* the text is read, "arts, *as* the manufacture of veſſels of gold and the like, *and the art of* dancing and ſo forth, are called, &c." In fact, ſkill in buſineſs which requires ſtudy, but is different from *ſacred* ſcience, is *human* knowledge. This ſenſe reſults *from the text.* He ſhould perform, in the houſe of his preceptor or teacher, work relative to the art to be learned by him; as the manufacture of golden veſſels, and the like, in the houſe of an inſtructor who works in gold; not *labour* of a different nature, as the thatching of a houſe and the like.

XVII.

NÁREDA: — Let him who wiſhes to acquire his own art, with the aſſent of his kinſmen, reſide near an inſtructor,

inſtructor, fixing a well-aſcertained period *of apprenticeſhip.*

2. Let the teacher inſtruct him, giving him a maintenance in his own houſe; and not employ him in other work, but treat him as a ſon.

" To acquire his own art ;" the art ſuitable to his claſs. " A time or period aſcertained" by the atteſtation of witneſſes. " Not other work," but *that which is proper* for inſtruction in the art.

The *Retnácara.*

" Let him reſide near his teacher" *(ácháryaſya vaſéd antè)*: by this is expreſſed the derivation of apprentice *(antévási)*, or pupil for *inſtruction in* arts. " Giving him a maintenance ;" *the compound term may be explained,* to whom ſubſiſtence is given. The teacher himſelf muſt allow a maintenance to his pupil: his own benefit is the *performance of a* duty, reputation *gained,* and ſome profit. In ſome places of the *Retnácara*, the reading is, " giving hire ;" ſtill a ſubſiſtence is meant by the word " hire."

In like manner, if a pupil for *the ſtudy of* the *Védas* need a maintenance, it is proper that the teacher ſhould give it. It is not mentioned in the law, becauſe moral duty alone is the principal conſideration of a ſtudent in the *Védas:* yet it ſhould be done, for otherwiſe duty is violated.

" But treat him as a ſon" (XVII); not, like a ſlave, employ him at pleaſure.

XVIII.

CÁTYÁYANA directs a penalty for employing *an apprentice* in other work :—He who does not inſtruct *his ſcholar* in the art, and cauſes *him* to perform other work, ſhall incur the firſt amercement ; and the pupil is therefore releaſed.

" He who does not inſtruct his apprentice in the art ;" the teacher who, having promiſed inſtructions, but either employing the ſcholar much in other work, or acting from the impulſe of

wrath, does not teach him the art, ſhall incur the firſt amercement: and the pupil may forſake him, and go to another teacher.

Then, how is he required to perform work (XVI)? Some reply, it is not forbidden to require obedience from him: but it is forbidden to employ him in buſineſs inconſiſtent with inſtruction and occupying much time; ſuch as travelling to many places, thatching a houſe, and the like. But others hold, that work, in the text of VRĬHASPATI (XVI), intends the buſineſs which is to be learned; it correſponds with the text, "the profit of whatever work he may there perform" (XX); and he ſhould be employed in ſuch labour. But if the teacher inſtruct him to the beſt of his knowledge, and do not employ him in other work, then the pupil forſaking his teacher, and going to another, ſhall be chaſtiſed.

XIX.

NÁREDA:—But he who deſerts his teacher, though inſtructing him and not culpable, ſhall be compelled by forcible means to reſide *with him*, and is liable to ſtripes and confinement.

"*Corporal puniſhment*," blows and the like; "confinement," or reſtraint: ſo a certain author *has explained the terms*.

The *Retnâcara*.

"Confinement;" binding. The *Chintámeni*.

For the loſs of life *(the literal ſenſe of the firſt term)* would be incongruous. This is conſidered. The teacher ſhould himſelf inflict the ſtripes or other puniſhment, according to law; not on a noble part by any means (XI 2), but with a ſmall rope or ſhoot of a cane (XII). The ſame chaſtiſement is proper for deſertion and for ignorance. The ſpiritual preceptor and pupil are ſimilar to the teacher and apprentice, but are diſtinguiſhed by the difference of *their* motives: the pupil ſtudies the *Véda* on account of duty: the apprentice learns an art for the ſake of wealth. Thus ſome *interpret the law*.

Others hold, that a pupil may be puniſhed by the teacher, if the pupillage were undertaken with the aſſent of kinſmen; for he

he has not tutorage, unleſs apprenticeſhip were agreed to: and here a lawſuit ariſes, on application made to the king.

But, in fact, *it appears* from the mention of the aſſent of kinſmen, *that* the pupillage laſts ſo long as the kinſmen do not withdraw *the boy; in the mean time* correction *may be given* by the teacher: but if his kinſmen withdraw him, a ſuit may be maintained; and if the pupil have no kinſmen, *ſtill* it is inferred that a lawſuit may ariſe on account of deſertion.

If, through an aptitude to learn, the pupil become perfectly inſtructed in his art before the expiration of his apprenticeſhip, he ſhall nevertheleſs ſerve his maſter the full time.

XX.

NÁREDA:—Though he have learned *his art*, the apprentice muſt fulfil his ſtipulated time; and the profit of his labour during that period ſhall belong to his teacher.

"Stipulated time;" the period agreed to. "The profit of his labour;" wages or hire, and the like. The *Retnácara.*

The hire receiveable, by the favour of the teacher, during the period of inſtruction; in that the pupil has certainly ownerſhip.

XXI.

YÁJNYAWALCYA:—Though he have acquired his art, the apprentice muſt reſide in his maſter's houſe during the period ſtipulated, receiving his ſubſiſtence from the teacher, and giving to him the fruit *of his art.*

The apprentice muſt reſide in his teacher's houſe during the ſtipulated period; that is, ſo long a time as was agreed to: *for inſtance;* "I will reſide in thy houſe four years, to ſtudy the art of medicine." *If ſuch an agreement* were *made*, even though he have gained the requiſite knowledge before the expiration of four

years, ſtill he muſt reſide *there*. How ſhall he reſide *there?* The anſwer is, receiving ſubſiſtence from his teacher, and applying to his benefit the fruit of thoſe inſtructions *he receives from him*. He muſt ſo reſide *in his teacher's houſe*. The *Mitácſharâ*.

Here, *it ſhould ſeem*, from the expreſſion "the profit of his labour," &c. (XX), that the teacher has ownerſhip even in what the pupil acquires by voluntary *exertion in* traffick and the like, independent of his art, and by agriculture or ſimilar means, and by treaſure-trove or other *accident*. It cannot be ſaid that it may belong to his father, under the texts *cited in a former chapter* (Book II, Chap. iv. V. 56), becauſe there are no grounds for ſelecting *one rule in preference to the other*. His kinſmen have aſſented to his apprenticeſhip (XVII); and, according to law, it is the duty of an apprentice to acquire wealth for his teacher. Nor ſhould it be ſaid, that the work *meant* (XX) is limited, by the title *under which the text is placed*, to the buſineſs to be learned. There is no authority for ſuch a limited conſtruction. Thus ſome *expound the law*.

But others allege, as a cuſtom, that the fruit of what is *done* through the means of the teacher, *(in conſequence of inſtructions,)* belongs to him; but, in the caſe of treaſure-trove or the like, the waif is taken by the pupil. According to JÍMÚTAVÁHANA, the pupil has, in every inſtance, a right to *retain* what is acquired by himſelf: this ſhould be conſidered.

XXII.

NÁREDA:— At the *expiration of the* period, the apprentice, having acquired his art, and formally delivering to the teacher the beſt reward in his power, departs with *his* permiſſion.

"Having acquired his art:" this intimates that if the art could not be learned in the time firſt ſtipulated, he ſhould ſtay, again fixing a period *of further apprenticeſhip*; not that he ſhould ſtay until the ſtudy be completed within the time firſt ſtipulated. For the ſtipulated period is ſhown to be *the* principal *conſideration*, by directing

directing the apprentice to fulfil his time even though he have learned *his art.* (XX).

When the time, or ſtipulated period, is expired, *the apprentice departs,* having preſented a gratuity to the teacher, *after formally* walking round him; and this is done as a token of reſpect: obtaining his approbation to the beſt of his power; giving the beſt reward in his power, and obtaining *his inſtructor's* approbation; or doing that which is the beſt reward for thet eacher. "To the beſt of his power" refers to the reward *.

This *(the apprentice)* is the ſecond labourer, *a ſervant* for human knowledge (IV). A ſervant for love is included among ſlaves, and will be *hereafter* mentioned. NÁREDA deſcribes the third labourer by the name of hired ſervant.

XXIII.

NÁREDA: — Labourers ſhould be conſidered as of three ſorts; higheſt, middle, and low: the hire of their labour ſhould be proportioned to their ſtrength and to the benefit *derived from their exertions.*

2. A ſoldier is the higheſt of theſe; a ſervant in huſbandry is middlemoſt; a carrier of burdens is loweſt: this is the three-fold diſtinction of hired ſervant.

"*Bhacti,*" benefit. "Hire of their labour;" the wages fixed for their labour. The *Retnácara.*

Conſequently wages ſhould be given according to the ſtrength of the ſervant, according to the work effected, and ſo forth: for inſtance, one *hired leader,* by his own exertion, repels a hundred hoſtile armies; another repels one foreign army: their wages ſhould be proportioned to their power. "Benefit;" particular effect of ſervice, explained by the Sage himſelf; "a ſoldier is the higheſt of theſe." Or, *it may mean that* ſoldiers ſhould be diſtinguiſhed according to their principal or inferior charge; as the ſoldier poſted in the rear. So, in regard to the man who thatches

* The laſt remark has guided the tranſlation. T.

thatches the houſe, or who collects the graſs or the like: their wages ſhould be paid according to their work.

XXIV.

VRĬHASPATI: — The ſervant for pay is declared to be of many ſorts; another is the ſervant for a ſhare *of the gain.* Of all, a low, a middle, and a high rank is propounded.

2. A ſervant hired for a day, a month, a fortnight, ſix months, or a year, muſt perform the work engaged for: and he receives the promiſed *reward.*

3. The ſoldier is the higheſt of theſe; the ploughman is the middlemoſt; the porter is declared the loweſt, and ſo is a ſervant employed in the buſineſs of the houſehold.

4. A ſervant of the ſecond deſcription is declared to be one hired for a ſhare *of the gain,* in the ſervice of a perſon living by agriculture, or by *attendance on* herds *of cattle:* no doubt he ſhall receive *a ſhare* of the grain produced, or of the milk.

The ſervant for pay is of many ſorts or deſcriptions; a hireling, an agent, and the like: another ſervant for pay is called a labourer for a ſhare *of the gain.* Theſe are the ſervants for pay mentioned by VRĬHASPATI in a former text (IV); for the labourer for a ſhare of the produce is a ſervant for pay *given* in the form of a ſhare. Of all the ſervants for pay, except the labourer for a ſhare, a low, a middle, and a high rank is declared: this has been *alſo* mentioned by NÁREDA (XXIII), and ſhall be explained.

He who undertakes ſervice for one day, is a ſervant for a day. So a ſervant for a month. "Half," *in the text,* ſignifies half a month, *or a fortnight;* a ſervant for half a month *or a fortnight:* ſo a ſervant for ſix months, and a ſervant for a year. "Each muſt perform the work engaged for:" he muſt perform that very

very work which the perſon ſtipulated when he hired *him as a* ſervant, and not any other work. Thus, hired on a ſtipulation for bringing water, he need not carry burdens, nor bring wood from the foreſt; but, hired on a ſtipulation for bringing fuel from the foreſt, he muſt fetch wood. In caſe of diſpute, it muſt be determined by the *tenour of the* compact. But if they mutually conſent *to other employment*, then every thing is proper by mutual agreement; no ſuit can be maintained at a ſubſequent time, for the party has himſelf previouſly conſented. But if a porter, hired to fetch wood from the foreſt, finds imminent danger to his life in that *employment*, he has a right to quit it, notwithſtanding his previous agreement. If he undertook it, knowing the great riſk of life, and afterwards, again hearing of the danger, or not hearing of it, recede, what is the rule in that caſe? In the caſe of imminent danger the employer cannot compel him, if he refuſe to abide by his agreement. But this rule is not applicable to ſoldiers and the like; for their employment is connected with riſk of life. This ſhould be conſidered as conſiſtent with reaſon.

"He receives the promiſed wages" (XXIV 2): when he ſtipulates leſs or more wages than are given by people in general for the ſame work, the ſtipulated hire is received under the authority of the text. If he ſtipulate more or leſs wages than are proportioned to the work, that very hire ſhould be received. But an agreement for leſs or greater wages, unintentionally made, either by deceit through falſe promiſes, *or extorted* by force or the like, is not valid, as ſtipulated intereſt, not ſpecially and freely promiſed by the debtor, need not be paid (Book I, v. XXXVII). This ſhould be admitted, and is neceſſary: but greater favour depends on the will of the maſter.

Of theſe ſervants for pay, the ſoldier is the higheſt *in rank* (XXIV 3). This is not excluſive; for, it is proper alſo to conſider a perſon ſkilled in accounts as included among ſervants of the firſt rank. A ploughman and ſervant in huſbandry are ultimately the ſame: nor is this excluſive; for an architect and others are entitled to a place in the ſecond rank. "A porter, &c." (XXIV 3): this is ſimilar, ſince there are *other* ſervants declared equal to him: "and ſo is a ſervant employed in the buſineſs of the houſehold" (XXIV 2), bringing things for the uſe of the houſehold and the like: he who performs theſe various offices

offices is alſo a ſervant of the loweſt rank; and others are alſo comprehended in the mode pointed out. Nor does it derogate from NÁREDA, that he has not mentioned the ſervant employed in the buſineſs of the houſehold.

"Another is the ſervant for a ſhare of the gain:" what is thus mentioned (XXIV 1), ſeparates two titles. The ſervant to whom food and veſture are given, and the labourer to whom *a ſhare of the* gain is delivered, form the double title, as will be mentioned (LXVII): and that labourer for a ſhare is declared to be the ſervant of perſons living by agriculture, or by herds *of cattle*. This again is general; there may be ſervants hired for a ſhare *of the gain* by perſons ſubſiſting by *the manufacture of* cloths and the like, *as* weavers and others; and by perſons ſubſiſting by flocks of goats, *ſheep*, and the like. A ſervant for participation is one hired for the conſideration of a ſhare. This ſenſe of the word the Sage announces: "the ſervant hired for a ſhare of gain, in the ſervice of a perſon living by agriculture, ſhall receive *a portion* of the grain produced; and in the ſervice of a perſon living by herds *of cattle, ſhall receive a ſhare* of the milk;" here "ſhare" muſt be ſupplied, according to the *Retnácara*. What ſhare? It will be mentioned in another place.

A commiſſioned ſervant is included by VRÍHASPATI among ſervants for pay. In regard to him alſo, the rule of high and low rank is to be underſtood according to the circumſtances of the caſe. But NÁREDA deſcribes him as the fourth labourer, and different from the hireling.

XXV.

NÁREDA:—He who ſhall be commiſſioned for affairs, or for the ſuperintendence of the family, ſhould be conſidered as a commiſſioned ſervant; and he is *alſo* called a family-ſervant *in ſome inſtances*.

"*Things*;" affairs. Theſe two *ſervants* are named, in judicial procedure, commiſſioner and family ſervant.

The *Retnácara*.

The ſenſe is, "commiſſioned" by the king, or other perſon, for

for affairs, ſuch as the protection of the ſubjects, the receipt of his revenue, or the maintaining of an army for war, and ſo forth; and by others alſo, for collecting the produce of the ſoil, or for the management of commodities bought or the like. The ſame ſhould be underſtood of one appointed *to act for his principal* in a law-ſuit. "Commiſſioned" over the family is obvious, though not mentioned by him *(by the author of the* Retnácara): he who is appointed to provide the food and clothing of the family is a commiſſioned ſervant. "Theſe two;" commiſſioned for affairs, and commiſſioned for the family: ſuch is the meaning *of the gloſs*.

Are they ſynonymouſly or ſeverally named commiſſioner and family-ſervant? Not the firſt; ſince commiſſioned for affairs would be the accepted ſenſe of the term family-ſervant. Nor ſhould it be affirmed that this muſt be admitted on *the authority of* the text, for it may be otherwiſe applied: and it is directed, at the time of affixing a meaning to a word, not to admit a ſenſe by acceptation, when the derivative ſenſe can be *uſed*.

A Rule of Philoſophy:—An accepted ſenſe, being once admitted, excludes the derivative ſenſe; but, when propoſed, it is inadmiſſible if the derivative ſenſe oppoſe it.

Nor ſhould it be ſaid, that here ſhould be admitted a ſecondary ſenſe without loſing the literal ſignification, for that cannot be received unleſs there be ſome objection to the obvious meaning. Thus, "he," in the expreſſion "he ſhould be conſidered as a commiſſioned ſervant," being applicable to the officer commiſſioned for affairs, and to the ſervant commiſſioned for the family, both comprehended under this term *uſed* in the ſingular number, commiſſioner is a name for each of them; "and he," the ſervant commiſſioned for the family, as is obviouſly meant, is called a family-ſervant. This may be the ſenſe of the text.

Nor *is* the ſecond *conſtruction admiſſible, that "one is a commiſſioned ſervant; the other, a family-ſervant."* For the ſervants commiſſioned for the family, excluded from the name of commiſſioner, would be excluded from the ſubdiviſion *of the ſubject, as propoſed in former texts* (III and V).

On

On this point it is ſaid a ſecondary ſenſe muſt be here partially admitted, and both be comprehended even under the term family-ſervant. Where the word cannot be pertinent without a ſecondary ſenſe, ſuch a meaning muſt be affixed; *but*, how is it inſerted in the text for that purpoſe? In the expreſſion "the cowpen is ſituated on the Ganges," and in ſimilar inſtances, the word Ganges being explained in the ſecondary ſenſe of its ſhore, the *Ganges*, or ſtream of water in the tract of BHAGÍRAT'HA'S car, is not included with the ſhore ſignified by the word Ganges. This argument is wrong; for the term is here employed in a ſecondary ſenſe, without loſing the literal ſignification. This is meant in the *Retnácara*, and ſhould be conſidered as accurate: hence it is ſaid, "*ſo named* in judicial procedure."

XXVI.

NÁREDA: — Four ſervants are declared to be thoſe who perform pure work; but they who do impure work are the ſlaves of fifteen ſorts, *ſome properly ſo called, others improperly**.

2. Work is declared to be of two ſorts, impure and pure: impure work is aſſigned to the ſlave; pure work, to the ſervant.

"Four ſervants;" a pupil, an apprentice, a hired ſervant, and a commiſſioner.

"To the ſervant;" to the pupil and the reſt of four ſervants. The *Retnácara*.

"Thoſe who perform pure work:" conſequently the pupil and the reſt ſhould not be employed in cleaning the houſe and the like. It appears from the ordinance, that even a hired ſervant ſhould not perform that taſk. But if any perſon, allured by temporary hire, be willing to do ſuch work, for one who has no ſlave, and who is himſelf unable to perform it, may he be ſo employed? or ſhould he be included in ſome one of the deſcriptions which will be given of ſlaves of fifteen ſorts? He who conſents to do

* This obſervation is added from Sir W. JONES's tranſlation of the text, as cited in the *Vivádárnava ſetu*, where it is attributed to VRÍHASPATI.

do the work of a ſlave, muſt perform it: in this inſtance there is no fault on the part of the maſter. Then, why has this text been propounded? When ſervants are not willing to do the work of a ſlave, then their maſter may not forcibly compel them: but when ſlaves refuſe to perform that work, he may compel hoſe *ſlaves* by forcible means. The text ſhould be conſidered as propounded for this purpoſe.

XXVII.

VRĬHASPATI *:—Cleaning the houſe, the gate-way, the neceſſary, and the road, removing the dirt and rubbiſh, and all other impurities,

2. Attending the maſter at his pleaſure, and rubbing his limbs, are to be conſidered as impure work; and all other work as pure †.

Though it be ſaid in this text that all other work is pure, yet there is no excluſion of other *work not ſpecified.*

XXVIII.

CÁTYÁYANA:—The ſons of ſlaves muſt abſolutely do the work of removing urine and ordure, attending their naked maſter, and handling cows and the like.

The *ſuppoſed* limitation in the preceding text is done away by the additional mention of attending a naked maſter and handling cows and the like: and it is confirmed, that the cuſtomary office of removing the dirt of the body and the like is comprehended *in the texts.* However applied, the rule is not infringed, ſince the texts are intended only as examples.

" Attendance

* The authority is not named: but in the *'Arnava ſetu*, and in the *Viváda Chintámani*, it immediately follows the texts there attributed to VRĬHASPATI, and here cited as NÁRADA'S.

† I omit the gloſs on this text, which is indelicate. The text itſelf is tranſlated freely.

" Attendance on the naked maſter ;" handing clothes to him. The *Retnácara.*

" Attendance on the naked maſter ;" rubbing his limbs while naked. The *Párijáta.*

Both interpretations ſhould be admitted, for they are proper. But, on the explanation given in the *Párijáta,* naked is unmeaning ; for, no other than a ſlave rubs the limbs of a maſter, though he be not naked.

Some remark, that, on a thorough examination of the texts, *it appears that,* where a perſon is hired, the performance of pure work conſtitutes a ſervant, and the performance of impure work conſtitutes a ſlave; and a hired ſervant, doing the impure work deſcribed by the text, ſhould be conſidered as a ſlave. Others hold, that ſlavery depends on the particular relation of property ; and ſervice, ſolely on the engagement of the ſervant. If it be ſaid, there is authority even over a ſervant ; *they anſwer,* this authority is not a cauſe of ſimilar dependence ; it is the relation of command, *not of property.* Nor ſhould it be objected, that a ſimilar relation may extend alſo to a wife or a ſon. For they are diſtinguiſhed ; or that is barred by the epithet of ſervant : and many do not admit the hire of ſlaves. As for *making* the admitted difference of dependence to conſtitute ſlavery, they deny it ; for it would not extend to ſlaves born in the houſe, and ſo forth.

Theſe four ſervants are called perſons bound to obedience. NÁREDA now explains the ſlave, or fifth deſcription of perſons bound to obedience.

XXIX.

NÁREDA :—One born *of a female ſlave* in the houſe *of her maſter,* one bought, one received *by donation,* one inherited *from anceſtors,* one maintained in a famine, one pledged by a *former* maſter,

2. One relieved from great debt, one made captive in war, *a ſlave* won in a ſtake, one *who has* offered *himſelf* in this form "I am thine," an apoſtate from religious mendicity, *a ſlave for a* ſtipulated *time,*

3. One maintained in conſideration of ſervice, a ſlave for the ſake of his bride, and one ſelf-ſold, are fifteen ſlaves declared by the law.

"Born in the houſe;" born of a female ſlave in the houſe *of her maſter*. "Bought" for a price. "Received;" or acquired, by the acceptance of donation and the like. "Inherited;" a ſlave of the father, or other anceſtor, paſſing by ſucceſſion to the ſon or other *heir*. "Maintained in a famine;" in a ſeaſon not good, at a time when proviſions are dear, or, *in other words*, during a dearth; then maintained: that is, whoſe life has been preſerved for ſervitude by food *then* given. "Pledged by a maſter;" his own ſlave pledged by the maſter to a creditor, for a loan received, *to be* his ſlave during the period of the loan. "Relieved from great debt;" redeemed from his creditor's cuſtody on account of a great debt, and therefore becoming a ſlave. "Made captive in war;" *one whoſe* life has been preſerved by *his* conſenting to ſlavery, when in danger of *his* life in battle; *and thus* acquired by the conqueror. "Won in a ſtake;" overcome after an agreement in this form, "if I be overcome in this conteſt, I am thy ſlave." Who has offered himſelf in this form, "I am thine;" delivering himſelf in this form, "I am thy ſlave," through deſire of money or the like. "An apoſtate from religious mendicity;" quitting the ſtate of a mendicant. "Stipulated;" *a ſlave* for a ſtipulated time; who has fixed a period in this form, "I am thy ſlave for ſo long a term;" and ſo forth. "Self-ſold;" who has ſold himſelf. Theſe ſlaves of fifteen ſorts are declared by NÁREDA. The text is thus explained according to VIJNYÁNESWARA, CHANDÉSWARA, VÁCHESPATI, and BHAVÁDÉVA.

"Won in a ſtake;" won by gaming.

The *Pracáſa* and *Párijáta*.

"Bought" and "received" *may* alſo *mean boys* purchaſed or received for adoption, *but who have* become ſlaves through ſome failure in the form preſcribed by the law. In that inſtance, "received" ſignifies given by the father and mother; and he who is ſelf-given, is one who has offered himſelf in this form, "I am thine:" he will be mentioned by this *deſcription*. "Maintained in a famine;" and who has conſented to ſlavery: but of him who has not conſented to become a ſlave, the ſervitude is not admitted

mitted by VIJNYÁNÉSWARA; for he particularly mentions consent *as a requiſite condition*: and that is proper, ſince there is no proof of dominion acquired by maintenance alone. Yet perſons bought, or received, may become ſlaves, although they did not conſent to it at the time; for they are in ſubjection, and cannot *now* become ſons *after a failure in the forms of adoption.*

If it be ſaid, they ſhould become ſervants; elſe a *Brâhmand* might become a ſlave, though his claſs be exempted from ſlavery: therefore perſons bought, or received, if they have not conſented to become ſlaves, ſhould not perform *impure work*, ſuch as attendance on their naked maſter and the like: The anſwer is, the ſlavery of a boy, who has conſented to adoption, being admitted by a text cited in Part II (Book V, v. CLXXXII) if the rites of *adoption* be not duly performed, ſervitude in general does really occur alſo in the caſe of perſons bought or received, *if the adoption fail.* In fact, ſince he is taken for adoption, he ſhould perform the office of a ſon; but he becomes a ſlave if he be excluded *(in conſequence of a failure in the adoption)* from the rites ordained by the *Véda*, ſuch as obſequies or the like. This is proper.

"Pledged by his maſter" (XXXI): but, he who receives a loan on pledging himſelf is of the ſame deſcription; and he is a ſlave, if he have agreed to it for ſubſiſtence: but not otherwiſe, *for* he is a ſervant if he have agreed to ſervice *only.*

"Relieved" from debt: this occurs in redemption from a debt due to another, and in remiſſion of a debt due to *the maſter* himſelf, in conſideration of the debtor's becoming a ſlave; but a purchaſe reſults from the remiſſion of a debt due to the maſter himſelf. However, it is ſo explained by authors. "Relieved from great debt" *comprehends* reſcued from diſtreſs of other kinds.

"Won in a ſtake:" it is obſerved by authors, that *the verb* is uſed under the rule they quote, that verbs of this particular claſs are employed in the ſecondary paſſive. But in fact it is alſo uſed in the primary paſſive, under another rule: therefore, in a ſtake thus ſet, "if I be overcome, I give thee that ſlave belonging to me," the winner becomes the owner of the ſlave.

A ſlave, who offered himſelf in this form, "I am thine," is of two ſorts; with, or without, a ſtipulated time. Thus; "ſo long as I ſerve thee as a ſlave, ſo much money ſhall be paid monthly;"

monthly;" or, "I will ſerve thee as a ſlave one year:" in theſe forms are two ſorts of ſlave, offering himſelf in theſe words, "I am thine;" *one* for a ſtipulated period, and *the other* for an indefinite time. But the ſlave for a fixed term, as ſubſequently deſcribed, uſes a ſimilar form of ſpeech.

This may be underſtood of the ſlave made* by the party himſelf, like a ſon made, *or adopted*, as deſcribed by MENU (Book V, v. CCLXXXV). A ſon made, *but whoſe adoption is* not *completed* according to *legal* form, is included under ſlaves made: how this interpretation can have been omitted by authors, may be queſtioned.

An apoſtate mendicant is a ſlave to the king.

XXX.

CÁTYÁYANÁ:—Where men of the three twice-born claſſes forſake religious mendicity, let the king baniſh a man of the ſacerdotal claſs, and reduce to ſlavery a man of the military or commercial tribe.

MISRA and CHANDÉSWARA explain *the term uſed in the text*, the *Cſhatra* and *Vis*, *or* Cſhatriya *and* Vaiſya, collectively. Thus a man of the ſacerdotal claſs is ſlave to none: but the *Cſhatriya* and *Vaiſya* become ſlaves to the king.

XXXI.

DACSHA:—If a man, after aſſuming religious mendicity, abide not by his duty, let the king cauſe him to be lacerated by the feet of dogs, and immediately baniſh him.

Deviation from his duty occurs when he takes a wife, like a

 houſeholder;

* *Crita*, or made, has been explained 'for a ſtipulated time;' taken literally, it admits of the interpretation here propoſed by the compiler.

houſeholder; and in ſimilar inſtances. That ſhould be diſcuſſed under the title of Baniſhment.

"A ſlave for the ſake of his bride" (XXIX 3); a man who acquieſces in ſlavery for the ſake of love, as mentioned by VRĬHASPATI (IV 1).

XXXII.

VRĬHASPATI defines that *ſlave*:—But the man who cohabits with the female ſlave of another, ſhould be conſidered as a ſlave for *the ſake of* his bride; he muſt perform work for her maſter, like other ſlaves, or like ſervants for pay.

As a ſervant for pay, (that is, a hireling,) or as a ſlave performs work for his own maſter, ſo muſt he ſerve his wife's maſter.

XXXIII.

MENU:—There are ſlaves of ſeven ſorts; one made captive under a ſtandard, *or in battle*, one maintained in conſideration of ſervice, one born *of a female ſlave* in the houſe, one ſold, or given, or inherited from anceſtors, and one enſlaved by way of puniſhment.

"Made captive under a ſtandard;" conquered in battle. As in the chapter concerning *Virâi*, (*in the* Mahábhárata,) BHÍMASÉNA thus beſpoke a king called SUSERMA, vanquiſhed during the war which aroſe from the ſeizure of a cow on the ſouth of *Virâi*:

Fool! if thou deſireſt life, hear from me the conditions: thou muſt declare before a ſelect aſſembly, and before the multitude, "I am a ſlave:
On theſe terms will I grant thee life. This is a
ed rule for him who is conquered in battle.

Conſequently,

Conſequently, ſince BHÍMA requires his declared acquieſcence, one who agrees to it becomes a ſlave; not every perſon conquered in battle, *whether he take quarter or not:* and this, *in the text of* MENU, comprehends perſons won in a ſtake.

" Maintained in conſideration of ſervice;" who has agreed to ſlavery in conſideration of maintenance, whether in a ſeaſon of ſcarcity or abundance. " Born in the houſe;" born of a female ſlave in the houſe. " Sold " by his father and mother, or by either of them; or " ſold " by himſelf. " Given" by his father and mother, or by either of them; or ſelf-given: and he who agrees to ſlavery in conſideration of relief from diſtreſs, is ſelf-given; for he gives himſelf on account of the favour conferred in delivering him from diſtreſs. " Inherited from anceſtors," (literally paternal); deſcended in ſucceſſion from the father or other predeceſſor. " Enſlaved by way of puniſhment;" who has agreed to become a ſlave to acquit a fine, under the text of MENU.

XXXIV.

MENU:—A man of the military, commercial, or ſervile claſs, who cannot pay a fine, ſhall diſcharge the debt by his labour: a prieſt ſhall diſcharge it by little and little.

But an apoſtate from religious mendicity is alſo enſlaved, by way of puniſhment; for CÁTYÁYANA directs, that a *Cſhatriya* and *Vaiſya* ſhall become ſlaves of the king, to atone for the offence of apoſtacy from religious mendicity (XXX).

It muſt here be conſidered, that it does not appear, from that part of CÁTYÁYANA's text (let the king reduce to ſlavery a man of the military or commercial claſs), that the king ſhall make him his own ſlave: he may cauſe him to become the ſlave of another; for this would be no infraction of the rule. But, on the queſtion, whoſe ſlave does the apoſtate from religious mendicity become? ſlavery to the king is ſuppoſed by CHANDÍSWARA to be denoted by the terms of CÁTYÁYANA's text: the meaning there is, let the king enſlave him. On the queſtion, to whom ſhall he be a

ſlave? ſince this muſt be comprehended *in the text*, and ſince one other perſon is mentioned, he takes him as his own ſlave.

Is there not an inconſiſtency with the text of NÁREDA; for he further mentions the ſlave for the ſake of his bride, and a ſlave pledged by his maſter (XXIX)? Some reply, the texts are intended to propound their ſervitude, not to enumerate the ſlaves; for they are ſo explained by VIJNYÁNÉŚWARA. The ſervitude of ſeven perſons is ſhown in the text of MENU (XXXIII), *it is* not *implied* that others beſides thoſe ſeven are not ſlaves. His text precludes a leſs number: not a greater number; for an explanatory enumeration permits a greater number.

Others hold, that a ſervant, for the ſake of his bride, acquieſcing in ſervitude through love, and giving himſelf into ſlavery for the gratification of his luſt, is included under "one given" (XXXIII): and in him who is pledged by his maſter the property of the creditor is not acknowledged, but uſufruct with the aſſent of the debtor. After the ſtipulated period, if the debtor do not redeem a pledge *given* for a fixed time, it becomes the creditor's property: how *then* are the ſlaves deſcribed by NAREDA comprehended in the text of MENU? but VIJNYÁNÉŚWARA admits the creditor's property in a pledge, even within the period of the mortgage; ſurely on his opinion, *they are* not *all* comprehended in MENU's text. *To this objection the anſwer is*, there is no proof of the creditor's property in a pledge within the period for which it is pledged; but, after that period, his property is acknowledged, and it ultimately becomes a ſecondary or inferior ſale. Thus, if the agreement be in this form, "ſhould I not redeem the ſlave at the expiration of the fifth year, this ſlave, and this property, belonging to me, ſhall be thine;" the principal ſum being conſidered as the price, there is in fact the complete act of relinquiſhment at a ſubſequent time, after a prior receipt of the price. It muſt be admitted by VIJNYÁNÉŚWARA and the reſt, *that it means pledged* for the payment of a debt due to the man himſelf; for redemption from a debt to another is implied by "one relieved from great debt" (XXIX).

Thus the texts of MENU and NÁREDA correſpond: but NÁREDA has mentioned fifteen ſorts as an enlarged explanation, and to form the *neceſſary* diſtinctions in regard to the enfranchiſement of ſlaves.

SECT.

Sect. II.—*On Emancipation from Slavery.*

Art. I.—*On Enfranchiſement of Slaves.*

XXXV.

Nareda:—Of thoſe *ſlaves* the firſt four (*one born in the houſe, one bought, one received, and one inherited*) are not *of right* releaſed from ſlavery: unleſs they be *emancipated* by the indulgence of their maſters, their ſervitude is hereditary.

2. That low man, who, being independent, ſells himſelf, is the vileſt of ſlaves; he alſo cannot be releaſed from ſlavery.

Literally "there;" that is, among thoſe ſlaves: the firſt quadruple ſet *is not emancipated;* collectively, one born of a female ſlave in the houſe, one bought, one received in donation or the like, and one inherited from anceſtors: theſe cannot be releaſed, unleſs they be emancipated by a maſter, whoſe life has been endangered, *but has been ſaved by the ſlave;* for the enfranchiſement of ſlaves of all ſorts, in that caſe, will be mentioned.

"Indulgence" *is explained,* in the *Retnácara,* affection. Conſequently the ſlave born in the houſe, and the reſt, may be liberated if the maſter be ſatisfied; but not otherwiſe. Since one maintained in a famine and the reſt are not comprehended, in the text of Nareda, under ſlaves received in donation and the like, they may be liberated. But it ſhould alſo be inferred, that a boy received for adoption as a ſon given, and ultimately becoming a ſlave through a failure in *the* forms *of adoption,* is not liberated without favour; ſince he alſo is one received *in donation.*

"Independent" (XXXV 2); *explained,* in the *Retnácara,* his own maſter. Conſequently there is no fault on the part of a dependent perſon, ſubject to his father and mother.

"He alſo cannot be releaſed from ſlavery" (XXXV 2); that

is, one who ſold himſelf cannot be releaſed from ſlavery. Hence emancipation is denied to five *ſlaves*. The ſeparate mention of one bought, and one ſelf-ſold, is intended to denote a greater offence in the perſon who ſells himſelf; but there is no offence on his part, if he ſell himſelf for a religious purpoſe.

Márcandéya purána: — If I enter the flames unknown to the *Chán'dála*, I ſhall again become his ſlave in *another* birth.

This is a reflection of the univerſal monarch HERIŚCHANDRE, who had become the ſlave of a *Cháńdála* to pay the ſacrificial fee, after giving his whole property to the holy Sage VIŚWÁMITRA, and who wiſhed to commit himſelf alive to the flames, with his wife, through affliction at the accidental death of his infant ſon RÓHITÁŚWA. "Unknown to the *Cháńdála*, &c:" that is, ſince a ſlave is dependent in *all* acts generally, he is not liberated even by voluntary death.

On this MISRA remarks, that "the ſpeech of HERIŚCHANDRE regards the miſconduct of a ſlave; elſe he could never be releaſed from ſlavery *under any circumſtances.*" It ſhould be conſidered, that a ſlave is liberated by death; *but*, ſince it is ſhown by implication, in the *Márcandéya-purána*, that a ſlave is dependent even in regard to *life and* death, his ſuicide, though allowed by the law, would produce immoral conſequences; hence, as a man is debtor to his creditor even in another birth, ſo he would become the ſlave of his former maſter. Yet, if his death happen by the act of God, he would be liberated from ſlavery; for there is no proof of the ſtate of ſlavery continuing in another birth, and the connexion of ſervitude is *in general* limited to the period of life. As for the obſervation, that elſe he could not be releaſed from ſlavery, it ſhould be conſidered, that, by the favour of deities, he may be releaſed from ſlavery, if he adhere to his duty. All this regards another world; there is not much uſe in further diſcuſſing the queſtion.

XXXVI.

MENU: — A *Súdra*, though emancipated by his maſter,

maſter, is not releaſed from a ſtate of ſervitude; for, of a ſtate which is natural to him, by whom can he be diveſted?

The meaning is, even by the owner's favour, a *Súdra*, born of a female ſlave in the houſe, or otherwiſe included in the quadruple ſet, or *become* a ſervant of the loweſt rank, cannot be releaſed.

And a ſlave is not releaſed from ſervitude without favour. There is no inconſiſtency if this be applied to others beſides a *Súdra*, but born of a female ſlave in the houſe, or the like.

The *Retnácara*.

Emancipated by him to whom he had become a ſlave by capture in war or the like, a *Súdra* is not releaſed from a ſtate of ſervitude to *Bráhmanas*. Since ſervitude is natural to him, who can deveſt him of a ſtate of ſlavery proper to the ſervile claſs? Hence, it is neceſſary that obedience be paid by a *Súdra* to a *Bráhmana*, or twice-born man. This is intended; elſe the ſubſequent enumeration of ſlaves would be nugatory.

CULLÚCABHATTA.

When ſome *Bráhmana*, becoming very poor, emancipates a ſlave, is he not liberated? As a ſon, ſo a ſlave, ſhould not be forſaken. When in very great diſtreſs a man releaſes a ſlave, ſtill, although the ſlave any-how provide his own ſubſiſtence by other work, he muſt return when his maſter recalls him, and perform the duties of ſervitude: the text is intended for this purpoſe. It is implied in CULLÚCABHATTA'S expoſition, that if the *Súdra* ſay, "becauſe I have been abandoned by thee, therefore I will not do thee ſervice," then the king ſhall compel him to *diſcharge the duties of* ſervitude; elſe the ſubſequent enumeration of ſlaves would be nugatory. Such is the meaning. If the ſenſe of the ordinance be, "ſince he belongs to the ſervile claſs, he is the ſlave of twice-born men; therefore the king ſhall cauſe him to be employed in ſervice, however reluctant:" then the particular alluſion of this text to one made captive under a ſtandard, and to one maintained in conſideration of ſervice, would be unmeaning; for the ſervitude of others, beſides thoſe made captives under a ſtandard and the like, reſults even from their

ſervile

ſervile claſs. It muſt however be conſidered, that the text *which enumerates ſlaves* (XXXIII) can alſo be applied to others beſides *Súdras*.

XXXVII.

MENU:—Both him of the military and him of the commercial claſs, if diſtreſſed for a livelihood, let ſome wealthy *Bráhmana* ſupport, obliging them, without harſhneſs, to diſcharge their ſeveral duties.

C. A *Bráhmana*, who, by his power, and through avarice, ſhall cauſe twice-born men, girt with the ſacrificial thread, to perform ſervile acts without their conſent, ſhall be fined by the king ſix hundred *panas*.

It ſhould not be objected, that, the ſervile employment of others than *Súdras* being forbidden by theſe texts of MENU, ſlavery is limited to this claſs; and the ſlavery of one made captive under a ſtandard, ſhould be eſtabliſhed for *Súdras* only: and the ſenſe of theſe texts is, that a *Bráhmana* ſhould with tenderneſs ſupport a *Cſhatriya* or *Vaiſya* diſtreſſed for a livelihood, but employ them in their own ſeveral duties; that is, employing a *Cſhatriya* in military ſervice or the like, and employing a *Vaiſya* in commerce and ſo forth, he ſhould maintain them. Conſequently, this ſenſe of the text being alſo inferred as a matter of courſe, the text is delivered as a rigid precept. It appears, therefore, that a wealthy *Bráhmana*, having occaſion for the ſervice of a ſoldier or the like, ſhould he, from anger or any other motive, omit to ſupport thoſe perſons, ſhall be amerced. He muſt oblige the *Cſhatriya* and *Vaiſya* to diſcharge their ſeveral duties, not to perform ſervile acts. This alſo is a rigid precept, which the legiſlator delivers in the ſecond verſe. If he cauſe twice-born men, girt with the ſacrificial thread, to perform ſervile acts without their conſent, he ſhall be fined ſix hundred *panas*: and this, *in the objector's opinion*, agrees with CULLÚCABHATTA's expoſition.

It

It is anſwered, the expreſſion " without their conſent," admits ſervitude with their conſent: and ſervile acts may be performed for a *Bráhmana*, by a man of the military or commercial claſs, from religious motives; as it is related in the *Mahábhárata* and other works, that CRĬSHŃA, an incarnation of the divinity, who took upon himſelf the human body, and accepted the cuſtoms of the world, did preſent water to waſh the feet of *Bráhmanas*. The author of the *Retnácara* alſo obſerves on the words " cannot be releaſed from ſlavery" (XXXV), that they regard others beſides *Súdras, but* born of a female ſlave in the houſe and the like.

If an independent *Bráhmana* employ a *Vaiſya* and a *Súdra**, hired as ſervants for military duties, or for commerce or the like, in waſhing his feet, againſt their will, he ſhall be amerced. Such is the ſenſe, as appears from the uſe of the term " by his power" (XXXVII 2).

Then, if a *Súdra* at any time do not perform ſervile acts for a *Bráhmana*, ought he to be forcibly employed in his ſervice? It appears from the expreſſion " cannot be releaſed from a ſtate of ſervitude," that the ſtate of ſervitude which has already occurred cannot be annulled. But, in this caſe, the man has not become a ſlave; what then ſhall be annulled? This ſhould be conſidered.

It ſhould not be objected, that the ſtate of ſervitude was born with him; becauſe that is intimated, by the words, a ſtate which is natural to him (XXXVI); and accordingly the ſervitude, even of one unbought, is admitted by the following text:

XXXVIII.

MENU: — But a man of the ſervile claſs, whether bought or unbought, he may compel to perform ſervile duty; becauſe ſuch a man was created by the ſelf-exiſtent for the purpoſe of ſerving *Bráhmanas*.

The expreſſion, " a ſtate which is natural to him," has no ſuch meaning *as ſuppoſed in the objection*. What does it mean? When a *Súdra* is born, is ſervitude to all *men* born with him? Or ſervitude

* So the MS. It ſhould be *Cſhatriya* or *Vaiſya*.

tude to no one in particular, but general, and *by which* he afterwards becomes the ſlave of him who takes him? Not the firſt; were it ſo, that *Śúdra* might be taken as a ſlave by all twice-born men; and if any *Śúdra*, not ſerving any perſon, were accidentally ſtarved or the like, it would be a ſin on the part of all twice-born men: a perſon cannot compel any *Śúdra*, *whom he meets* on the road, to perform ſervile duty. Nor *is* the ſecond *ſuppoſition right;* for, ſervitude requiring a permanent connection, there cannot be a ſtate of ſervitude without a maſter *to be ſerved;* conſequently it is proved, that the ſon of a female ſlave forſaken by her maſter is not, at the moment of his birth, ſlave to any man. Even though a ſtate of ſervitude were admitted to belong to that *Śúdra*, there would be no uſe in *thus ſuppoſing* a perfect, but unconnected, ſervitude; for, even though he were a ſlave generally, yet, unleſs he be received *in donation or otherwiſe* by any one man, he cannot be forcibly ſeized by him.

On this point the *beſt* opinion is this: as property in gold, ſilver, and other effects received, may be deveſted by gift, ſale, or other alienation; but not the dominion over a wife, though received like gold or the like; (for a huſband and wife are not divorced by deſertion or neglect:) ſo a ſlave alſo is not emancipated. But that is technical, not actual: for, during the period of deſertion, there *is* no ſin on the part of his maſter in not ſupporting him; and his maſter has no power over wealth *then* acquired by him. "A ſtate natural to him" (XXXVI) is mentioned as a cauſe; and "natural" ſignifies produced at the creation, when the ſervile claſs was produced; *namely*, his *natural* ſubſiſtence by ſervile attendance.

If any ſlave, emancipated by his maſter, has undertaken ſervile attendance on ſome other perſon, and afterwards the former maſter claims him; what is the rule in that caſe? He belongs to the ſecond maſter; becauſe, in fact, he accepted *his ſervice* at the very moment when his *former* ſervitude was ceaſing. What is ſaid of a *Bráhmana* compelling a man of the ſervile claſs to perform menial offices (XXVIII), is intended to authorize the ſervitude of a *Śúdra*, after forbidding that of a *Cſhatriya* and a *Vaiſya*. By the expreſſion "compel him to perform ſervile duty," is declared the propriety of employing a *Śúdra* in menial offices, whether bought or unbought: the word "bought" implies

plies ſlave in general; "unbought" denotes hired ſervant and the like; conſequently there is no offence in employing him on ſlaviſh work, though he be a ſervant *only*. This is expreſsly declared.

Until a *Súdra*, emancipated by his maſter, be taken by another, as thus explained, he may be remanded; and a *Cſhatriya* and *Vaiſya* may be employed in ſervile duties with their conſent: they may be releaſed from ſervitude by the favour of their maſter, and cannot be again ſeized without their own conſent. A maſter employing a *Súdra*, whether he be a hired or a commiſſioned ſervant, in menial offices, ſhall not be amerced; but if he employ a *Cſhatriya* or *Vaiſya* in ſervile duties, againſt their will, he ſhall be amerced. Such is the conciſe ſtatement *of the law*.

That one born of a female ſlave in the houſe, one bought, one received in donation, and one inherited from anceſtors, cannot be releaſed from ſlavery, has been declared: NÁREDA next declares, that one who gave himſelf in this form, "I am thine," cannot be releaſed from ſlavery.

XXXIX.

NÁREDA:—Over the ſlave, who, having given himſelf in this form, "I am thine," goes *to another, the ſecond maſter* does not acquire *abſolute dominion:* at pleaſure the former owner may reclaim him.

This muſt be underſtood of a ſlave who goes of his own accord, without *emancipation by* the favour of his maſter.

"Slave;" *literally*, one not his own maſter. "If he go to another perſon;" if he go to become a ſlave: in that caſe the former maſter may claim that ſlave; and the other maſter, though he have received him, does not obtain him *as a ſlave*: but, emancipated by the favour of his maſter, he may be releaſed from ſlavery. This ſhould be affirmed; elſe it would be unequal that one born in the houſe and the like may be releaſed from ſlavery, and that one who offered himſelf in this form, "I am thine," ſhould be incapable of freedom.

It may be *admitted*, that, by their maſter's conſent, a *Cſhatriyá* and a *Vaiſya*, who have voluntarily undertaken ſervitude, may be releaſed from ſlavery, and be received by another: but a *Súdra* may not be taken by another maſter; for it is declared by MENU, that a *Súdra*, though emancipated by his maſter, is not releaſed from a ſtate of ſervitude. This inference is denied. Since there is no proof of the former maſter's property after emancipation, an unowned ſlave may be received; and, a ſecond property ariſing, both have not a diſtinct ownerſhip. The title of both is abſolutely ſimilar; but the right of the ſecond maſter ſubſiſts, becauſe the ſlave has not been emancipated by him; therefore, without his conſent, the former owner is prevented by this text (XXXIX) from ſeizing the ſlave.

It ſhould not be objected, that the text of MENU (XXXVI) ſhows the former owner's property in a ſlave, though forſaken by him: hence, a ſecond maſter acquires no property in a ſlave ſtill appertaining to a former owner; for one peculiar right precludes another of the ſame nature. Property in an enfranchiſed ſlave, cauſing dependence and the like, is not literally admitted. That *another* may take him again into ſervice, though enfranchiſed, is implied in the text of MENU (XXXVI); elſe, an enfranchiſed ſlave not being forſaken by his former maſter, the *Súdra* would be deprived of a livelihood, ſince he could not be received by another: or the houſeholder would be guilty of ſin in not ſupporting the ſlave, though voluntarily diſmiſſed; ſince there could be no relinquiſhment annulling his property.

If *it be* admitted that a right, called ownerſhip, over the liberated ſlave, *ſubſiſts* to authorize the maſter to remand his ſlave, wherever he reſide, *even* after he has found a livelihood by alms and the like, ſtill there is nothing inconſiſtent with the right of the ſecond maſter; for his property is of a different nature. But, in fact, no different title is admitted: for it may be explained by *ſuppoſing the* property annulled; and *another interpretation* would be inconſiſtent with *the notion of* a ſecond maſter. The text of MENU (XXXVI) intimates the taking *of him* again *into ſervice*, after emancipation from his laſt maſter, as well as from his firſt; for no diſtinction is expreſſed. Thus, according to authors, any ſlave emancipated by his maſter, received by another, and emancipated by him alſo, may be taken by his former maſter.

On

On the opinion, in which the ſlave for a ſtipulated time is oppoſed to him who gives himſelf in this form, "I am thine," this text (XXXIX) regards a ſlave for an indefinite term, as well as a ſlave for a definite time whilſt the period *ſtipulated* is unexpired. A ſlave for a definite term is liberated after the period expires. But, according to authors, the ſlave for a ſtipulated term, as diſtinct from him who offered himſelf in this form, "I am thine," is not intended by this text (XXXIX). This ſhould be admitted.

XL.

NÁREDA: — They who are ſtolen and ſold by thieves, and they who are enſlaved by force, ſhould be liberated by the king; their ſlavery is not admitted.

Stolen by a robber in their infancy, or by a thief, and ſold by him, but remaining ſilent at the time of the ſale through apprehenſion of ill treatment from the robber, and afterwards telling the circumſtances to obtain their freedom, *theſe* ſlaves ſhould be releaſed; and if the maſter refuſe their diſcharge, they ſhall be liberated by the king: and they who are enſlaved by force, (*Súdras*; and *Cſhatriyas*, or *Vaiſyas*, employed in ſervile work without their conſent;) ſhall alſo be releaſed by the king.

If a potent robber, ſeizing any perſon, ſell him; and the perſon ſold remain ſilent; in that caſe, he ought not to be liberated by the king, becauſe the purchaſe was *made* through the fault of the perſon ſold. This is denied; for, whether he have conſented or not, the validity of his act under the impulſe of fear is not admitted by YÁJNYAWALCYA (Book II, Chap. IV, v. 58).

XLI.

YÁJNYAWALCYA: — One enſlaved by force, and alſo one ſold by robbers, is releaſed from ſlavery.

This text of YAJNYAWALCYA (XLI) is cited by VIJNYÁNESWÁRA

NEŚWÁRA in this manner; "the legiſlator declares the law applicable to the ſlave and apprentice." Conſequently his meaning is, that one forcibly taken as a pupil is alſo releaſed. But an apprentice is not ſuggeſted by the literal ſenſe of the text; for he is not a ſlave, nor is he bought. However, a pupil is comprehended in the rule by parity of reaſoning; and the obvious argument, noticed by this author, is alſo obſerved by us: moreover, ſhould any perſon forcibly taking one fit to receive inſtruction in arts, compel him to reſide in his houſe, and employ him in work; or if any perſon, not having authority over the boy, to pleaſe a teacher of arts, deliver to him another's child (without the knowledge of the father and mother) to receive inſtructions in an art; in thoſe caſes alſo his apprenticeſhip is null. This is implied. VIJNYÁNÉŚWARA's meaning is this: it appears from the legiſlator's propounding the duty of an apprentice, after this text (XLI), by the verſe cited in the preceding ſection (XXI), that an apprentice is alſo implied in this text.

But others ſay, that VIJNYÁNÉŚWARA, author of a commentary on the collected texts of YÁJNYAWALCYA, having premiſed the five deſcriptions of perſons bound to obedience as delivered by NÁREDA, and not finding any mention of pupil, and of hired and commiſſioned ſervants, in this chapter *of* YÁJNYAWALCYA, ſays, "he declares the particular law reſpecting ſlaves and apprentices:" therefore one verſe (XLI) relates to ſlaves; the other verſe (XXI) relates to apprentices.

This might be ſuitable, if it were not repeated, when citing the other verſe (XXI), "he declares the duties of an apprentice." In fact, from his uſe of the term "applicable," ("he declares the particular law applicable to the ſlave and apprentice:") the commentator hints another opinion: it may or it may not be ſo; *ſtill* compulſive apprenticeſhip and the like muſt be null under the general text (Book II, Chap. II, v. 10). This we deem *a* proper *expoſition*.

"And alſo one ſold by robbers" (XLI): it is the opinion of VIJNYÁNÉŚWARA, that under the word "alſo," one pledged and one given are likewiſe releaſed: and it ſhould be underſtood, that a perſon won in a ſtake from a robber ſhould alſo be diſcharged.

NÁREDA

NÁREDA declares the mode of emancipation for all ſlaves:

XLII.

NÁREDA: — Among thoſe, whoever reſcues his maſter from imminent danger of his life, ſhall be releaſed from ſlavery, and ſhall receive the ſhare of a ſon.

Among thoſe ſlaves of fifteen ſorts, whoever delivers his maſter from danger of life, is releaſed from ſlavery, whether he be a ſlave inherited from anceſtors, or be of another deſcription. This is the general cauſe of enfranchiſement of all ſlaves; as mentioned in the *Mitâcſharâ*, on explaining the text of YÁJNYAWALCYA (XLIV), "he who ſaves the life of his maſter, attacked by robbers, by a tiger, or the like, ſhould be emancipated." Therefore the conſtruction is, among theſe ſlaves above deſcribed, (one born of a female ſlave in the houſe, one bought, one received in donation, one inherited, and one who offered himſelf in this form, "I am thine;") whoever reſcues his maſter, &c. This conſequently obviates the bad interpretation, that one maintained in a famine, or the like, is not releaſed from ſlavery on reſcuing his maſter from danger of life; for, in compariſon with one maintained in a famine, the ſervitude of one inherited or bought is more rigidly permanent: and the emancipation of one who ſaves his maſter's life, is mentioned generally by YÁJNYAWALCYA.

Without *the* conſent *of his maſter* to his emancipation, he is not releaſed from ſervitude on ſaving his maſter's life; this conſent alone effects his releaſe from ſlavery: ſuch is the inference of common ſenſe; for preſervation of life, and every other ſervice, is incumbent on a ſlave bought. If this be affirmed, the anſwer is, no ſuch rule can be eſtabliſhed without *authority from* the text of a Sage, or of an *eſteemed* Author.

A maſter and ſervant, ſkilled in ſwimming, are croſſing a river to go to another village. The maſter's apparel accidentally becoming looſe, his power *of ſwimming* is loſt while he is buſied in making faſt his apparel; and he is unable to paſs the remaining

part of the river, meaſured by five or ten cubits *from the ſhore*; he is, however, landed by the ſervant, who had croſſed before him, with the help of a boat or the like found on the ſhore. In this caſe, is he releaſed from ſervitude, or not? It ſhould not be affirmed, that he is releaſed from ſervitude, in this caſe, under the authority of the ordinance: for it would be inconſiſtent with approved uſage.

On this point, ſome obſerve, that where a ſlave, neglecting his own ſafety, and highly valuing his maſter's life, reſcues him from the encounter of a tiger or the like, and is himſelf preſerved by the act of GOD; in that caſe he is releaſed from ſlavery. But if ſome perſon attempt to deſtroy a man by poiſon, and the ſlave of that man, diſcovering it, prevent him from eating the poiſoned food; or if the maſter intended to go out of his houſe, not aware of a tiger ſtanding at the door, but his ſlave, ſeeing the tiger, prevent him; in theſe, and ſimilar caſes, it may be admitted that he is not releaſed from ſervitude. This ſhould be examined.

"And ſhall receive the ſhare of a ſon" (XLII); like a ſon, he ſhall receive a ſhare of that man's wealth. That the ſlave ſhould, like a ſon, take the heritage of a *Bráhmana*, ſeems contrary to reaſon; but ſhould be allowed, becauſe it is admitted by VIJNYÁNÉŚWARA. Thus, in the chapter on the Adminiſtration of juſtice, or Forms of judicial procedure, after premiſing ſlaves from the womb, and the reſt, he ſays, "ſince it is declared by NÁREDA, that whoever reſcues his maſter from imminent danger ſhall be releaſed (XLII), what ſhould bar his ſuit againſt his maſter, if he be not releaſed, or if the ſhare of a ſon be not given?" Therefore no doubt ſhould be entertained on what is expreſſed by the text, in the ſenſe *thus* inveſtigated by authors. However, in ſome places no ſuch uſage ſubſiſts on *the occaſion of* benefits received from ſlaves: and therefore, in whatever country it is not cuſtomary to give a ſon's ſhare *to a ſlave*, in that country if a benefit be received from any ſlave, the ſhare of a ſon ſhould not be given to him (Book I, v. XCVIII).

In the *Vyaváhára* and other works this text (XLII) is cited; but nothing particular is ſaid reſpecting it.

XLIII.

XLIII.

NÁREDA:—One maintained in a famine is releaſed from ſervitude, on giving a pair of oxen; for, what was conſumed in a famine, is not diſcharged by labour *alone*.

"One maintained in a famine," or ſaved from death by food ſupplied during a ſcarcity of proviſions, is liberated by the gift of a pair of oxen. The reaſon is aſſigned: what was conſumed during the famine, is not diſcharged by his labour *alone*, but requires ſome other payment; and that, under the authority of the text, is the gift of a pair of oxen. Such is the conſtruction according to CHANDÉSWARA. Conſequently one maintained in a famine, deſiring emancipation from ſervitude, muſt give a pair of oxen; ſo much is the conſideration of his enfranchiſement under the authority of the text: and what was conſumed during the famine, is abſolutely diſcharged by the work already performed by him; but, on account of the difficulties of that ſeaſon, and the great value of things *then* conſumed, a pair of oxen muſt alſo be given. Such is CHANDÉSWARA's meaning.

But MISRA holds that the ſenſe is this; he is releaſed on giving what he conſumed during the famine, together with a pair of oxen. Conſequently, he muſt repay what he uſed during the dearth. By directing payment of what he conſumed, it is not meant that the value it then bore ſhould be made good; but, if it cannot be repaid in kind, it ſhould be paid by an equivalent for the price borne at the time of emancipation.

Is not what he then conſumed repaid by his labour? The Sage replies; "it is not diſcharged by his labour" (XLIII). It is alſo ſaid in the *Mitácſhára*, in a gloſs on the text of YÁJNYAWALCYA (XLIV), 'one maintained in a famine, and one 'maintained in conſideration of ſervice, are emancipated on 'relinquiſhing their maintenance, repaying ſo much as has been 'conſumed out of the maſter's property from the commencement 'of *their* ſervitude.' The meaning is this: it is intimated by the text, that property ceaſes on relinquiſhing maintenance, *that is*, food or eatables: but if one maintained in conſideration of ſervice,

do not eat his maſter's food for the ſpace of ſeven or ten days in the month of *Aſwiní (a ſeaſon of religious abſtinence)*, that is no relinquiſhment of maintenance. Since he has no property in food which ought not to be eaten, that can be no loſs of maintenance. It therefore appears, that relinquiſhment of maintenance conſiſts in relinquiſhing food to which he has a right.

Since a ſlave has no wealth excluſively his own (LI and LII), is it not impoſſible for him to repay what he has conſumed? Although this objection may be made under the opinion in which it is contended that ſlaves are incapable of property, yet the ſlave's ownerſhip of wealth given through affection, like that of women over female property, muſt be univerſally acknowledged.

Others hold, that the text of YÁJNYAWALCYA (XLIV) does not relate to one maintained in a famine, becauſe the gift of a pair of oxen is not mentioned; but relates to one maintained in conſideration of ſervice, for it accords with a text of NÁREDA (XLVIII); and in that text the word "immediately" ſhows his emancipation on the very day when he deſires his releaſe from ſervitude. (It ſhould not be objected, that the word "immediately," ſignifying that day, denotes his enfranchiſement on the very day when he relinquiſhes maintenance, *with, or without, demanding his diſcharge.* That word would be ſuperfluous, ſince the ſame ſenſe might be obtained without it: *and it muſt therefore ſignify the day when he claims his releaſe.)* In the preſent inſtance, ſome conſideration, ſuch as the gift of a pair of oxen, is required for emancipation from ſervitude. Even though one maintained in a famine were not diſtinguiſhed from one maintained in conſideration of ſervice, ſtill, being diſtinguiſhed from a ſervant for a period depending on agreement, he muſt give a pair of oxen beſides relinquiſhing his maintenance. By the word "relinquiſhing" (XLIV) is here meant not accepting it.

Since one maintained in a famine is ſimilar to this ſervant, the expoſition delivered by CHANDÉSWARA on the words "for what was conſumed, &c." (XLIII) ſhould be admitted in this caſe. Nor ſhould it be objected, that it appears, from the word liquidate in the following text, that both muſt repay what they have conſumed.

XLIV.

XLIV.

Yógi-YÀJNYAWALCYA :—He who ſaves his maſter's life, *is releaſed from ſervitude; and ſo are ſome ſlaves* on relinquiſhing ſubſiſtence, and *others* on liquidating that *debt for which they became ſlaves.*

Saving his maſter's life, and payment of debt, are diſtinct from the direction for a pair of oxen to be given by one maintained in a famine. However, there is no difficulty, *ſay theſe lawyers*, in explaining "liquidate" as ſignifying that he is emancipated by the gift of a pair of oxen, and by liquidating what he conſumed during the ſeaſon of ſcarcity.

XLV.

NÁREDA :—One pledged *is* alſo *releaſed*, when his maſter redeems him by diſcharging the debt; but, if *the creditor* take him in payment *of his demand*, he becomes a purchaſed ſlave.

When the maſter whoſe ſlave he is, or his *own* father, redeems him, or when he redeems himſelf, then a ſlave pledged is alſo releaſed: but if he to whom the ſlave is pledged take him, he is afterwards a purchaſed ſlave; that is, he remains as one bought. So the *Retnácara*. He becomes a purchaſed ſlave, becauſe he is ſold by his maſter for a price *paid* in *the remiſſion of* the debt: and he who ſells himſelf, is in effect bought. Hence theſe two cannot be releaſed from ſlavery, unleſs by the favour of the maſter, or by ſaving his life.

XLVI.

NÁREDA :—Paying the debt with intereſt, a debtor is releaſed from ſervitude; and a ſlave for a fixed period is alſo emancipated by fulfilling the ſtipulated term.

Repaying, with intereſt, ſo much as had been paid, through his maſter, to a creditor, and for which he conſented to become a ſlave. Hence it appears, according to ſome lawyers, that intereſt muſt be again paid; elſe, "with intereſt" would be unmeaning. But that is wrong; for, were it ſo, a man who has undertaken ſervitude to diſcharge his own debt with intereſt, muſt again pay intereſt to his maſter. Therefore, he who has undertaken ſervitude to diſcharge a debt, muſt pay the principal and intereſt, if intereſt have not been *already* received: but in the caſe of one redeemed from a debt due to another, the man is abſolutely a purchaſed ſlave; or he may be releaſed from ſervitude, on payment of the ſame principal and intereſt which had been paid *to the creditor*.

"On liquidating that *debt*" (XLIV) is thus explained in the *Mitácſharâ*; the *ſlave* is releaſed on liquidating, that is, on repaying with intereſt, the amount received by his maſter who pledged him, or the amount paid by the *preſent* creditor to redeem him from a *former* creditor. Another interpretation has been already mentioned: but this expoſition agrees with the *Mitácſharâ*.

"By fulfilling the ſtipulated term" (XLVI): this is the mode of emancipation for him who is called a ſlave for a ſtipulated time. This interpretation is given by authors. This ſlave for a ſtipulated time is a diſtinct ſort of ſlave offering himſelf in this form, "I am thine:" the emancipation of one who ſo gave himſelf having been completely declared, the emancipation of a ſlave for a ſtipulated time has been already delivered. Thus other lawyers expound the text. But others again hold, that the emancipation of him who is called a ſlave for a ſtipulated time, is comprehended under the following text (XLVII). "Stipulated;" a ſtipulated term, or a definite period: this interpretation, already noticed, ſhould be remembered.

XLVII.

NÁRADA:—One who offered himſelf in this form, "I am thine," one made captive in war, and a ſlave won in a ſtake, are emancipated on giving a ſubſtitute equally capable of labour.

It

It is the opinion of other lawyers, that one who offered himſelf in that form is diſtinct from the ſlave for a definite period.

" On giving a ſubſtitute ;" on giving a ſlave equal to himſelf.
The *Retnácara.*

Another ſlave equally capable of labour. MISRA.

XLVIII.

NÁREDA :—One maintained in conſideration of ſervice is immediately releaſed on relinquiſhing his ſubſiſtence, and a ſlave for the ſake of his bride is emancipated by divorcing his wife.

He who is ſervant for the ſake of ſubſiſtence is emancipated by relinquiſhing it. So MISRA. But we cannot aſcertain why ſervant is mentioned under the title of Emancipation from ſlavery, for it would be proper to ſay, he who is a ſlave for the ſake of ſubſiſtence, &c.

" By divorcing his wife ;" by ſeparating *himſelf* from her. " His wife ;" the female ſlave. The *Retnácara.*

According to the *Mitácſharà*, the ſenſe is, ' becauſe it is forbidden to cohabit with a ſlave.'

" His wife ;" the female ſlave. After divorcing or forſaking her, the obligation to ſerve her maſter ceaſes.
The *Vivàda Chintámeni.*

XLIX.

CÁTYÁYANA : — If a man approach his own female ſlave, and ſhe bear him a ſon, ſhe muſt, in conſideration of her progeny, be enfranchiſed with her child.

" Her progeny ;" the ſon born of her. On his account ſhe muſt be enfranchiſed with her iſſue ; that is, with her ſon : and this rule is applicable if her maſter have no legitimate or adopted ſon ; for in that caſe ſhe need not be enfranchiſed. This con-

ſtruction agrees with the *Pracâśa*, *Pârijâta*, and *Retnácara*; and MISRA holds the ſame opinion.

NAREDA declares the form of manumiſſion:

L.

NÁREDA:—Let the benevolent man, who deſires to emancipate his own ſlave, take a veſſel of water from his ſhoulder, and inſtantly break it;

2. Sprinkling his head with water containing rice and flowers, and thrice calling him free, *let the maſter* diſmiſs him with his face towards the eaſt:

3. Thenceforward let him be called "one cheriſhed by his maſter's favour:" his food may be eaten, and his favours accepted; and he is reſpected by worthy men.

"Benevolent;" affectionate, or ſatisfied. It comprehends a perſon emancipating the ſlave who has preſerved his life, or the like; for no other form of manumiſſion has been ordained. Or the manumiſſion of a ſlave, who has preſerved his maſter's life, ſhould be performed by the maſter with affection and benevolence.

"Take a veſſel of water from his ſhoulder, and inſtantly break it;" by this is figured the diſcontinuance of his office of carrying water. From the ceſſation of that duty, it appears, under the authority of the text, that all ſervile duties are diſcontinued. The ſprinkling of water with flowers and rice is auſpicious, and is ordained as a part of the ceremony of manumiſſion. "Thrice declaring him free" is intended to confirm his emancipation. Diſmiſſion with his face towards the eaſt is auſpicious, and is ordained, *but* as an *uneſſential* part of the ceremony. Thenceforward he ſhall be called by the appellation of "*freedman*, *or* one cheriſhed by his maſter's favour." The *Retnácara*.

Others ſtate this meaning: his appellation formerly was, "the ſlave of this man;" but now he ſhould be called, "cheriſhed by this man's favour."

"His food may be eaten;" it appears from the text, that, if a man

man of the commercial claſs happen to be the ſlave of a *Cſhatriya*, his food ſhould not be ſhared by other men of the commercial claſs; but, after manumiſſion, it may be ſhared by them, and ſo in other caſes. "And his favours accepted:" it appears that favours ſhould not be conferred by ſuch a *Vaiſya* before manumiſſion; but now, after manumiſſion, they may be accepted. Some lawyers hold, that his favours could not be received, becauſe he was incapable of property; but now, ſince he may poſſeſs property, being free, his favours may be accepted.

LI.

NÁREDA:—Theſe three perſons, a wife, a ſlave, and a ſon, have, *in general*, no wealth excluſively their own: the wealth, which they may gain, is *regularly* acquired for the man to whom they belong.

LII.

MENU:—Three perſons, a wife, a ſon, and a ſlave, are declared by law to have, *in general*, no wealth excluſively their own: the wealth, which they may earn, is *regularly* acquired for the man to whom they belong *.

2. A *Bráhmana* may ſeize without heſitation, *if he be diſtreſſed for a ſubſiſtence*, the goods of his *Súdra* ſlave: for, as that ſlave can have no property, his maſter may take his goods.

"Earn;" acquire. The *Retnácara*. The ſenſe is, 'doing acts whence property may be obtained.' Such acts are the labours of huſbandry and the like. But CULLÚCABHATTA ſays, this merely illuſtrates the dependence of a wife and the reſt, in reſpect of property acquired by themſelves; for it will be mentioned, that a wife has excluſive property of ſix kinds;

* Already cited in Book II, Chap. IV, v. LVI.

kinds; and a wife being qualified for acts in which property must be used, a woman, with *the* assent of her husband, may even use wealth common to them both. VIJNYÁNÉSWARA holds the same opinion; and so do JÍMUTÁVÁHANA and others. But it does not appear to be admitted by CHANDÉSWARA, VÁCHESPATI MISRA, and others; for they otherwise explain these, and the texts which will be cited. The mode of reconciling the difficulties suggested by CULLÚCABHATTA will be delivered in its place.

The sense of the second verse (LII 2), according to CULLÚCABHATTA, is, that a *Bráhmana* master, without hesitation, with confidence, without apprehension of punishment from the king, may take the goods of his slave if he be distressed: the Sage subjoins a *lax* complimentary phrase; whatever belongs to his slave, belongs to the master; the slave, though he be the owner of the goods, has not exclusive dominion over them. Therefore, under the authority of the text, the master, though he forcibly seize goods belonging to another, *(that is, belonging to his slave,)* shall not be amerced.

But, according to the opinion, in which it is maintained that a slave is absolutely incapable of property, "without hesitation" is explained 'with confidence:' in this case, any *Bráhmana* whosoever can only receive from a *Súdra* slave effects ascertained not to belong to his master; but *he must* not *accept* goods which are not *so* ascertained: the Sage declares it an offence to accept them without such an ascertainment, "he can have no property, &c:" thus, if he receive the goods of a stranger from *the hands of* a different person, the validity of the gift may be questioned.

LIII.

DÉVALA, *cited* in the *Retnácara* and *Chintámeni*:—After the death of the father, sons may divide his estate; but they have no ownership, *or full dominion*, while a faultless father lives*.

2. MENU has declared, that, like them, women have no

* Cited again in Book V, v. 5.

no dominion over any thing, while their huſbands live; nor ſlaves, while their maſter ſurvives.

It appears from the expreſſion, "like them," that the want of dominion of a ſon whoſe father is living, over the paternal eſtate of a wife while her huſband ſurvives, and of a ſlave during the life of his maſter, are ſimilar. What is this want of dominion? Since it is intimated by the two conditions, (while the huſband lives, and while the maſter exiſts,) that both have *dominion or* ownerſhip after *the* death *of the huſband and maſter*, even at that time dominion, or ownerſhip, ſubſiſts, but is in fact a mere entity. In expounding the text of NAREDA (Book II, Chapter IV, v. LIII 2), perſons not their own maſters are explained by authors, 'ſons, ſlaves, and the like.' But want of dominion is an abſolute want of independence. Accordingly that term is uſed inſtead of the word dependence: and ſlaves and the reſt cannot, at that time, give away their own acquired property.

It ſhould not be argued, that this text relates to wealth acquired by the maſter of the ſlave, or by the huſband of the wife. The exception could not be pertinent, unleſs their dominion or ownerſhip might have been ſuppoſed; for an exception implies a prior general rule. Since the independence of a ſon might be ſuppoſed, becauſe he has ownerſhip of his father's wealth (Book V, Chap. I, Sect. I, Art. I), the text is propounded for the purpoſe of denying that independence. Thus ſome expound the law.

"Over any thing;" ſince independence in regard to female property will be deduced from particular texts, and from the reaſon of the law, this dependence regards all things except that. The wife's and the ſlave's want of property above mentioned (LII) is a privation different from that of female property and the like; or it may be underſtood as dependence in regard to property different therefrom. Wives and the reſt may accompliſh rites for which money is required, by uſing female property and the like.

LIV.

LIV.

CÁTYÁYANA :—Whatever goods belong to a ſlave, his maſter is declared by law to have dominion over them ; but that maſter has no right to the goods which are acquired by publick ſale.

This reading *(pracáśa-vicreyát,* or publick *ſale,)* occurs in ſome places of the *Retnácara :* but in the *Chintámeni* the reading is, through favour or by ſale *(praſáda vicreyát) ;* and this may be well expounded. What is ſold, through favour, by the maſter to the ſlave ; or what is obtained by the ſlave from his maſter, by ſale, (that is, by purchaſe,) or obtained by him from his maſter through favour, belongs to the ſlave, not to his owner. So the *Retnácara.* MISRA expounds it: what is obtained by the ſlave from his maſter's favour, or by ſale from him, belongs to that ſlave ; his maſter has no right to it. As women are independent in regard to female property, ſo are ſlaves alſo in regard to property acquired by favour. It appears from the literal ſenſe of the text, that ſlaves are independent in regard to what has been given through favour by the maſter, or by another perſon. But MISRA and the reſt ſay, by the maſter's favour.

The *Pracáśa* and *Párijáta* concur in reading *na ſwámí dhanam arhati,* the maſter has no right to the goods. LACSHMÍDHARA reads *tat ſwámí dhanam arhati,* their *maſter or* owner has a right to the goods. According to that reading, "their owner" is meant of the ſlave. So the *Retnácara.*

LV.

CÁTYÁYANA :—A free woman, or one who is not a ſlave *of the ſame maſter (for the word* adásí *may bear either ſenſe*),* becoming the bride of a ſlave, alſo

* *Adásí :*] the gloſs hardly notices the more obvious interpretation of free woman : without a reference to the *Vivádá Chandra,* I ſhould not have diſcovered that both interpretations are intended by the commentators cited on this text.

alſo becomes a ſlave *to her huſband's owner;* for her huſband is her lord, and that lord is ſubject to a maſter.

Literally, "not a female ſlave;" that is, not mancipated to the maſter of him whoſe bride ſhe becomes: for this *interpretation* is neceſſary from the connection implied in the word ſlave; and, a maſter of the male ſlave being ſuppoſed, it is proper to interpret the text, not mancipated to him. The expreſſion "ſhe becomes a ſlave," alſo implies the ſame connection. In this expoſition, the *Vivâda Retnâcara* and *Vivâda Chintâmeni* concur: and the female ſlave of another, or a free woman not the ſlave of any man, becoming the bride of a mancipated ſervant, is enſlaved to his maſter. In that caſe the female ſlave of another becomes enſlaved to the maſter of the male ſlave, with the aſſent of her former maſter.

"Not a female ſlave:" if the negation ſhow one different from a female ſlave generally, *(that is, a free woman,)* and if it be ſaid that ſhe who is the ſlave of any other perſon is not different from a female ſlave generally, *(that is, ſhe is not a free woman,)* ſtill there may be a general difference from ſlavery, becauſe ſhe is releaſed from ſervitude by *her maſter's* conſent *to her marriage.* In effect there is no difference *between theſe expoſitions.* Such is the opinion intimated in the *Retnâcara.*

But MISRA writes, that her marriage is in fact a cauſe of emancipation from ſervitude to her former maſter. Hence this text belongs to that title *(the title of Emancipation);* and proves the *ſecond* ſervitude to be formed with the conſent of her maſter. In the caſe of her marriage without his conſent, as in the marriage of a *chéticâ,* or female attendant, the former maſter's property is not loſt.

ART. II.—*On Perſons liable to Slavery.*

LVI.

NÁREDA:—In the inverſe order of the claſſes, ſlaver

is not legal, excepting *the caſe of* one who forſakes his duty: *in this reſpect*, the condition of a ſlave is held ſimilar to *that of* a wife.

" In the inverſe order :" thus a *Vaiſya* cannot be the ſlave of a *Súdra*; nor a *Cſhatriya*, of a *Vaiſya*; and ſo forth. An illuſtration is given; " ſimilar to *the condition of* a wife :" as a woman of the commercial claſs cannot be the wife of a *Súdra*, nor a woman of the military claſs be the wife of a *Vaiſya*; ſo in this caſe alſo. " Excepting one who forſakes his duty :" by this it is expreſſed, that one who forſakes the duty of his own order, may become a ſlave even in the inverſe gradation of claſſes. Such is the opinion of MISRA and CHANDÉSWARA. Conſequently, an apoſtate *Vaiſya* may voluntarily become the ſlave of a *Súdra*, and ſo forth; but if he do not agree to become the ſlave of any perſon in particular, the king ſhall make him his own ſlave, as already mentioned.

On this point an obſervation ſhould be made: the ſervitude of him alone who forſakes the *profeſſed* duty of his " order," is expreſsly allowed in the inverſe gradation of claſſes; is the ſervitude even of others than a *Bráhmana*, who forſake the duty of their " claſs," illegal in the inverſe gradation? for, how can the expreſſion, " except one who forſakes his duty," bear both ſenſes?

LVII.

CÁTYÁYANA: — BHRIGU admits the ſervitude of one who, being his own maſter, gives himſelf, as *the marriage of* a wife *ſelf-given is acknowledged*: ſlavery ſhould be limited to three claſſes; never *can* a *Bráhmana become a ſlave*.

2. *The ſervitude* of men of the military, commercial and ſervile claſſes, who have forfeited their independence, may be in the direct, not in the inverſe order of the claſſes.

3. But even a man of equal claſs muſt not reduce a *Bráhmana*

Brâhmana to ſlavery: yet a mild and learned man may employ in labour one inferior to himſelf in thoſe qualities.

4. Still let not the higheſt twice-born man perform impure work; for the glory of a king is obliterated by the ſlavery of a *Brâhmana*.

5. The law permits the ſervitude of men of the military, commercial, and ſervile claſſes, to one of an equal claſs, on ſome accounts; but on no account let a man compel a *Brâhmana* to perform ſervile acts.

"Never a *Brâhmana*" (LVII 1): the ſlavery of a *Brâhmana* is univerſally forbidden: "as *in the caſe* of a wife." He elucidates the precept: "in the direct order of the claſſes, &c." Men of the military and other tribes, accidentally forfeiting their freedom and independence, *may become ſlaves* in the direct order of the claſſes. This conſtruction *is ſuggeſted* by preceding terms. Though the ſervitude of a *Brâhmana* be univerſally prohibited, he repeats the prohibition for the ſake of particular explanation; "but even a man of equal claſs, &c." Or the ſervitude of other claſſes, in the direct order, is declared; as there is no claſs ſuperior to a *Brâhmana*, his ſervitude to a man of an equal claſs might be ſuppoſed: the Sage obviates that doubt. "But even a man of equal claſs, &c." (LVII 3); by this it is implied, that the ſervitude of *Cſhatriyas* and the reſt, to men of equal claſs, is permitted. He ſubjoins a particular rule in reſpect of a *Brâhmana*: "a mild and learned man, &c.;" ſuch a man, reducing to ſervitude a *Brâhmana* inferior in reſpect of virtue and learning, may not compel him to perform impure work, ſuch as removing urine or ordure; but he may employ him in pure work, ſuch as ſweeping a temple or the like. But the king ſhould never reduce a *Brâhmana* to ſlavery: the Sage therefore ſays, the king's glory would be obliterated. Or the expreſſion is general; his glory would be loſt, even if a *Brâhmana* be enſlaved by others. This intimates diſgrace. Hence the ſervitude even of a willing *Brâhmana* ſhould not be permitted; for *the king* himſelf would ſuffer thereby.

By forbidding the ſervitude of a *Bráhmana*, no objection is implied to his ſerving as an agent in collecting the revenue of a village or the like. It ſhould not be ſaid, that even the office of an agent, being ſervice, is forbidden, becauſe MENU ordains, "never let him *(a* Bráhmana) ſubſiſt by *Swavrĭtti* *;" and he himſelf explains it, "Service is named *Swavrĭtti*, or *dogliving*, and of courſe he *(a* Bráhmana) muſt by all means avoid it †;" which is expounded by the learned, ſervice or acts producing gratification only, *not religious merit*. From the declaration contained in the following text, that a *prieſt becoming the* king's ſervant is not a true *Bráhmana*, (or, which is the ſame thing, that the prieſt offends,) no fault on the part of his maſter is eſtabliſhed.

'SÁTÁTAPA :—Thoſe untrue *Bráhmanas* are declared by holy Sages, acquainted with the principles of things, to be *of* ſix *ſorts:* the firſt of them is a ſervant of the king; the ſecond, a buyer and ſeller.

Some hold, that a *Bráhmana* may, with his own conſent, be employed as a commiſſioned ſervant; but not without his conſent, for the appropriate fine would be thereby incurred.

"The law permits &c." (LV 5): equal claſs there comprehends equal qualities. Thus a *Cſhatriya*, a *Vaiſya*, and a *'Súdra* may be employed as ſlaves by men of equal claſs, even though theſe be only equal in virtue: ſuch is the law in reſpect of thoſe claſſes. But a *Bráhmana* can never be the ſlave of one *merely* equal in virtue. The *Párijáta* and HELÁYUDHA.

A *Bráhmana*, who follows the duties of the military, commercial, or ſervile claſs, bearing arms, practiſing huſbandry, commerce and the like, or performing ſervice, can never employ a *Bráhmana* in a ſervile duty. LACSHMÍDHERA.

But CHANDÉSWARA aſſents to both conſtructions.

"Their ſeveral duties" (XXXVII 1) are explained in the *Retnácara*, the duties ordained for the military and commercial claſſes. They are maintained in conſideration of ſuch work. But, if a *Bráhmana* cauſe them to perform ſervile acts, the ſame legiſlator

* MENU, Chap. IV, V. 4. † Ibid. V. 6.

legiſlator declares *a penalty* (XXXVII 2). A *Brâhmana*, who, by his power, ſhall cauſe twice-born men, girt with the ſacrificial thread, (or virtuous and learned,) to perform ſervile acts without their conſent, ſhall be fined by the king ſix hundred *panas*. This is the ſenſe according to the *Retnâcara*. By "twice-born men" are meant the *Brâhmana*, *Cſhatriya*, and *Vaiſya*. But, with their conſent, there is no objection to the performance of ſervile acts by men of the military and commercial claſſes.

But a man of the ſervile claſs, whether bought or unbought, he may compel to perform ſervile duty (XXXIII): whether bought or unbought, he may compel him to perform impure work. The *Retnâcara*.

LVIII.

VISHNU:—He who employs a man of the moſt elevated claſs in ſervile duty, ſhall be fined in the higheſt amercement.

"A man of the moſt elevated claſs" is explained, in the *Chintâmeni*, a man of the ſacerdotal tribe. Others think there is no difficulty in aſſigning ſuch a puniſhment to the man who employs, in ſervile duty, one of a higher claſs than his own.

In the caſe of one who is not his own maſter, dominion and ſervitude occur in the inverſe order of the claſſes; *as* in the ſtory of HERIŚCHANDRE, *recorded* in the *Márcandéya-purána*: accordingly the term "his own maſter" is uſed by CÁTYÁYANA and others, when prohibiting ſervitude in the inverſe order of the claſſes. CHANDÉSWARA.

It ſhould be conſidered, that the expreſſion "his own maſter" is thus uſed in the text of CÁTYÁYANA (LVII); "one who, being his own maſter, gives himſelf." The ſervitude of one who is not his own maſter, in the inverſe order of the claſſes, may be thus underſtood; when a *Cſhatriya* delivers his own *Vaiſya* ſlave to be the mancipated ſervant of a *Sudra*, then *one who is not his own maſter becomes a ſlave in the inverſe order of the claſſes.*

LIX.

CÁTYÁYANA:—He who ſeizes a woman of the ſacerdotal claſs, he who ſells her, and he who enſlaves a woman of family, impelled by luſt,

2. Or cauſes her to be approached by another, ſhall be amerced; and that *enſlavement* is null.

There is a ſlight difference in the reading according to the *Retnácara* and *Chintámeni**. "Impelled by luſt" is explained in the *Retnácara*, with her own conſent, through deſire. Both authors explain the text; "he who enſlaves a woman of family voluntarily offering herſelf, or who delivers her to another, ſhall be fined." Authors have not exhibited the *other* interpretation; "he who enſlaves a woman of family impelled by luſt, *(that is*, unable to reſiſt the impulſe of deſire, and *therefore* yielding her perſon,) ſhall be fined." Nor is it noticed, that this is inconſiſtent with AMERA's interpretation of a woman of family, 'a woman who preſerves *the honour of* her family.'

"And that is null" (LIX 2): that enſlavement is null and void. Thus it is incidentally mentioned, that ſhe is of courſe releaſed from ſlavery.

LX.

CÁTYÁYANA:—The man who treats as a ſlave the nurſe of an infant child, or a free woman, or the wife of his dependent, incurs the firſt amercement;

2. And he who attempts to ſell an obedient female ſlave, though ſhe reſiſt the ſale, and though he be not diſtreſſed, but able to ſubſiſt, ſhall pay a fine of two hundred *panas*.

"The

* In the firſt, the text is read *Cámát tu ſanſ'rítám*; in the other, *Cámát ſanſ-rijatám*. This variation does not affect the ſenſe.

" The nurſe of an infant child," who nouriſhes that infant at her breaſt. " A free woman," intruſted to him, or who has become a ſervant for maintenance. " His dependent ;" his ſervant. " Though ſhe reſiſt ;" though ſhe ſay, " I ought not to be ſold." The *Retnácara*.

It appears that the nurſe of an infant, though ſhe be a ſlave, ſhould not be ſo treated : for " free woman," *ſubſequently mentioned*, denotes an independent woman. VÁCHESPATI MISRA clearly explains it : " the nurſe of an infant," though ſhe be a ſlave ; that is, one who gives her breaſt to an infant : " a free woman ;" one who ſerves for ſubſiſtence and the like : if they do not conſent to be ſold, the *ſeller incurs* the firſt amercement, or a fine of two hundred and fifty *panas*.

" An obedient female ſlave " (LX 2) ; from this it appears that there is no objection to the ſale of one whoſe conduct is vicious. It alſo appears, from the term " though he be not diſtreſſed," that there is no objection to the ſale, if he be diſtreſſed for ſubſiſtence ; and from the expreſſion " able to ſubſiſt," that there is no objection to the ſale, if he be unable to ſubſiſt otherwiſe, though the ſeaſon be not calamitous.

SECT. III.—*On Wages and Hire.*

LXI.

NÁREDA : — The rule and the act of payment, and nonpayment, of the wages or hire of ſervants, are *now* declared, called in law Nonpayment of wages *or* hire.

The title of law, called Breach of promiſed obedience, has been already propounded ; that which is called Nonpayment of wages or hire, is now delivered. Conſidering breach of promiſed obedience as a branch of nonpayment of wages, MENU has not

ſeparately propounded it; or breach of promiſed obedience falls under the miſcellaneous or ſupplementary title.

The rule and act of payment and nonpayment both *conſtitute the title of* Nonpayment of wages or hire. The rule of payment, ("wages or hire ſhould be paid;") and the act of payment: the rule of nonpayment, ("wages or hire ſhould not be paid;") and the act of withholding payment: *theſe* are *comprehended in* nonpayment of wages or hire.

VIJNYÁNÉSWARA reads, "the conſecutive rule of payment and nonpayment of wages to ſervants is declared;" and he expounds it, the conſecutive rule of payment, and conſecutive rule of nonpayment, will be delivered in the following verſes, under *the title of* Nonpayment of wages or hire.

LXII.

NÁREDA:— Let the maſter, for whom work is performed, pay wages to the ſervant, according to their agreement, at the beginning, the middle, or end of his labours, as may be ſettled between them:

2. Wages not being ſtipulated, let the factor, the herdſman, and the ſervant in huſbandry, *reſpectively*, receive a tenth part of the profit on goods ſold, of the milk, and of the grain.

"The maſter for whom work is performed;" *literally*, the maſter of the work. According to their agreement; as was ſtipulated. At the beginning, the middle, or end of the labour. The *Retnácara*.

Conſequently the meaning is, at the beginning, the middle, or end of the labour, as was ſettled between them; the wages ſhall be paid at the period agreed on. But if none were ſettled, any one of thoſe periods may be the term of payment: and if the wages be not paid even at the third period, application ſhould be made to the king.

Others hold, that payment ſhould be made by him who ſhares *the produce of labour*, at the beginning, the middle, or the end of it.

it. According to their opinion it is intimated, that, if payment be not made at thoſe periods reſpectively, by them who ſhare the produce of labour, recourſe to the king is allowed, and ſo forth.

Succeſſively, five parts at the commencement, ſeven at the middle, and twenty-eight at the end of the labour.

The *Párijáta*.

According to this opinion, dividing the whole of the wages agreed for, into forty parts, he ſhould pay five at the commencement of the labour, and ſo forth. Whence the author has deduced a diviſion into forty parts, and the ſucceſſive payment of five parts &c. ſhould be inquired. At preſent, an agreement for paying wages at the end of the month is very cuſtomary.

" Milk ;" *literally*, the ſeed of cows (LXII 2): *meaning* the beſt produce of kine, *which is* milk. The *Retnácara*.

LXIII.

YÁJNYAWALCYA :—He who cauſes work to be performed without fixing the wages, ſhall be compelled by the king to give a tenth part of the *profit ariſing from* commerce, cattle, or grain.

The maſter who cauſes work to be performed in commerce, attendance on cattle, or agriculture, without fixing the wages of his ſervant, ſhall be compelled by the king to pay him a tenth part of the profit *ariſing* therefrom. The *Retnácara*.

VIJNYÁNÉSWARA *gives* the ſame *expoſition*.

LXIV.

YÁJNYAWALCYA : — The will of the maſter *determines the wages* of him who tranſgreſſes time and place, and of him who does the work otherwiſe *than was ſtipulated* : but more ſhall be paid if more be done.

A ſervant who works at a different time and place from that which is proper, or otherwiſe than was agreed, by doing leſs or the like, receives wages at the will and pleaſure of his maſter :

but if he do more work on his maſter's requiſition, he receives greater wages. The *Retnácara*.

The ſecond verſe is cited by VIJNYÁNÉSWARA, with this obſervation: "the Sage ſpeaks of one who does not act according to *his maſter's* orders." VIJNYANÉSWARA'S meaning is this: though he ſee a proper time and place for the ſale of the commodity, if *the factor*, through inſolence or the like, do not ſell it; or if he accept leſs profit, thinking that the time and place would cauſe him much trouble; let the maſter pay him what wages he pleaſes, not the full hire. Again; if he obtain greater profit by his own ſelection of time and place, a greater reward than was previouſly ſtipulated ſhall be given by the maſter to the ſervant.

When greater profit is obtained by his own ſelection of time and place, (that is, by his own exertion,) then only a greater reward ſhall be given; not if the greater profit were cauſed by *circumſtances of* time and place, *without any exertions on his part*. For, were it ſo, leſs wages being paid to one who obtained leſs profit, and greater wages to one who obtained ample profit, the *direction for* receiving the full hire would be abſurd; and the maſter is entitled to the greater profit obtained on his goods at the proper ſeaſon.

Others explain time and place in this manner: a ſervant receives wages determined by the will of his maſter, if he deviate from the time or place thus preſcribed: "build a wall in the month of *Cártici*;" or, "conſtruct a boat on the ſhore of the Ganges."

LXV.

YÁJNYAWALCYA:—According to the work performed by a ſervant, though the whole taſk impoſed might be too much for both *maſter and ſervant together*, muſt wages be given; if either of them could have performed it, *and it be performed*, let the promiſed reward be paid.

This text is intended for a rule in the caſe of a ſervant whoſe work and hire are thus ſtipulated: "ten pieces of money ſhall be received for building this wall." By the expreſſion "even by

by both," is alſo implied "by many:" if it could not be performed by any one, *or* if the work be not completed by reaſon of ſickneſs or the like, then wages muſt be given in proportion to the work done, as determined by arbitrators: in proportion to the work which each ſervant has performed, let the maſter pay him wages. Neither ſhall the ten pieces of money be paid, as had been promiſed; nor ſhall payment be withheld for the work partially done. If the work can be performed; if it be performed by both, or by many ſervants, the promiſed or ſtipulated recompenſe ſhall be paid, and divided amongſt them. Neither ſhall the whole reward promiſed be paid to each; nor ſhall each be paid in proportion to his work. Such is the opinion of VIJNYÁNÉSWARA.

Here 'wages in proportion to his work' do not ſignify in proportion to the part of the work *done* and to the *whole* wages, but a recompenſe to be paid according to the number of days: for VIJNYÁNÉSWARA, in the latter part *of his gloſs*, means daily hire, by the term 'in proportion to work.'

Though the whole taſk (which could only be performed by many perſons) could not be accompliſhed by both *maſter and ſervant together*, wages muſt be given in proportion to the work done; but if it could have been performed by both maſter or ſervant together, or by either of them, in that caſe the fine preſcribed muſt be paid. Such is the ſenſe of the text, and that *fine* will be declared in its place. The *Retnácara.*

The meaning of the gloſs is, if one or two perſons erroneouſly undertake to perform, on ſtipulated wages, a taſk which could *only* be performed by many, the ſervant ſhall certainly receive the proper hire of his labour, though the work be not completed. But, if it could have been accompliſhed by the maſter or ſervant, then, ſhould it remain unperformed in conſequence of neglect or the like, the ſervant ſhall pay the fine preſcribed.

Both interpretations may be admitted. In the *Párijáta the text is expounded*, "if the taſk require the labour of both *maſter* "*and ſervant*, the ſervant ſhall receive wages in proportion to "the work performed by him; if the taſk could be performed "*by the ſervant alone*, and it be performed, let the promiſed re-"ward be paid." This interpretation of both parts *of the text* is omitted by the other two commentators.

LXVI.

VRÍHASPATI:—Let the man who guides the ploughſhare have a third or a fifth part *of the grain, if no ſpecial agreement be made.*

The disjunctive " or " ſeparates two caſes declared in the following text:

LXVII.

VRÍHASPATI: — Let *the ploughman,* to whom food and veſture are given, take a fifth; and let him who is ſupported by the profit *alone,* receive a third part of the grain produced.

" Supported by profit ;" by the fruit of labour, by the grain produced, and the like: meaning him who has no ſuch allowance of food and veſture.

A tenth part, as directed by NÁREDA (LXII 2), is aſſigned to a ſervant different from the ploughman. The *Retnácara.*

In this expoſition the *Chintámeni* concurs. The meaning is this: the hire mentioned is allowed to a ſervant employed in cuting graſs preparatory to tillage. Or the text of NÁREDA may relate to pulſe and the like, which require ſowing and watching only, *not tillage.*

LXVIII.

APASTAMBA:—A ſervant in tillage, who abandons his work, ſhall be beaten with a ſtaff; ſo ſhall a herdſman *who neglects his duty,* and his own cattle ſhall be ſeized.

A ſervant in tillage, or ploughman, who abandons his work, or abſconds, ſhall be beaten with a ſtaff. So ſhall a *negligent* herdſman; and moreover, the herdſman's cattle ſhall be ſeized.

The *Chintámeni* and *Retnácara.*

LXIX.

LXIX.

Vriddha MENU :—*The* wages *of ſeamen* ſhall be ſuch as are *uſually* given by men who underſtand ſea voyages, and who know countries, and ſeaſons, and commodities; unleſs there be a ſpecial agreement.

" Men who underſtand ſea voyages;" meaning generally perſons well acquainted with commercial affairs. The *Retnácara*. The *Chintámeni*, in fact, gives a ſimilar expoſition. It is conſequently the author's opinion, as ſome lawyers remark, that this, with the tenth part *of the profit* directed by NÁREDA and YAJNYAWALCYA (LXII 2, and LXIII), conſtitutes an alternative.

But others hold, that this text concerns the wages of ſeamen, becauſe it mentions ſea voyages. In other caſes, the wages ſhall be a tenth part of the profit; but the wages of ſeamen ſhall be the ſame which are *uſually* given, by merchants trafficking by ſea, to their ſervants; or if the wages have been previouſly ſettled, they ſhall be paid *accordingly*. By the reſtriction of " men who know countries, ſeaſons and commodities," it is implied, that wages determined by any perſon whoſe intellect is diſturbed ſhall not be paid.

LXX.

NÁREDA:—The implements *of work*, and whatever is intruſted *to ſervants* for their maſter's buſineſs, ſhould be diligently preſerved; not wickedly *neglected* by any means.

" Implements of work " (the tie of the yoke and other implements of huſbandry), and " what is committed *to ſervants* for their maſter's buſineſs " (ſuch as grain and the like for agriculture), ſhould be diligently kept by the ſervants, not wickedly or knaviſhly *neglected*. The *Retnácara*.

" Agricul-

"Agriculture," in this gloſs, ſignifies 'huſbandry and the like:' for NÁREDA has premiſed the factor, the herdſman, and the ſervant in huſbandry (LXII 2).

"The implements of work:" the tie of the yoke and the like, which are neceſſary or uſeful in work, and which are intruſted *to the ſervants* for the buſineſs propoſed, (be it agriculture or any other occupation,) muſt be diligently kept by the ſervants. If they be deſtroyed even by the act of GOD, *but* in conſequence of the ſervant's neglect, it is a fault on the part of that ſervant. This inference ſeems juſt.

LXXI.

VRÍHASPATI:—If the ſervant do not perform any part of his maſter's buſineſs, he forfeits his wages; and may afterwards be ſued *for a fine:*

2. And if a ſervant, having received his wages, perform not his work, though able to do it, he ſhall pay twice the amount as a fine *to the king;* and *the full amount of* thoſe wages *to his maſter.*

If a ſervant able to perform his taſk, having undertaken to execute work required by his maſter, do not perform any part of it, (that is, not the ſmalleſt part of it,) in that caſe he forfeits his wages. He loſes the amount of the wages verbally promiſed. Does it mean, "he ſhall pay that amount;" ſince this correſponds with the text of YÁJNYAWALCYA (LXXII)? No; for that is ſignified by the expreſſion "and may afterwards be ſued;" *literally*, a conteſt ſubſiſts. By "conteſt" is meant a law-ſuit: and by ſaying that a law-ſuit afterwards ſubſiſts, a fine is intimated; and that fine ſhould be deduced from the text of YÁJNYAWALCYA (LXXII.)

"And if a ſervant, &c." (LXXI 2): ſince he has actually received wages, he ſhall pay twice the amount as a fine to the king, and their full amount to his maſter.

LXXII.

YÁJNYAWALCYA:—A ſervant who deſiſts from working

working after he has received his wages ſhall pay twice their amount, and their full amount *only* if he have not received them: the implements of huſbandry muſt be diligently kept by the ſervants.

He ſhall pay twice the amount of thoſe wages, *in the firſt caſe;* and their full amount, (not more than was agreed; not twice their amount;) *in the ſecond.* Therefore twice the amount *of the wages* ſhall be paid by him who begins the work, and then deſiſts from it after receiving his wages; and the full amount *only* if he have not received them.

"The implements of huſbandry," *namely*, the ſpade, the ploughſhare, or the like, muſt be diligently kept or preſerved by the ſervants, that is, by the ploughmen and the reſt.

The *Retnácara.*

The payment of the full amount, or of twice the amount of his wages, ſhould be underſtood as a fine to the king. "The implements muſt be diligently kept," as alſo directed by NÁREDA (LXX); this ſhould be underſtood of a ſervant employed in labour.

VIJNYÁNÉŚWARA, after ſtating this expoſition, propoſes another conſtruction of the laſt hemiſtich, in this manner: "or he ſhall be forcibly compelled to perform his work, after paying him the wages promiſed;" as directed by the following text of NÁREDA:

LXXIII.

NÁREDA:—A ſervant who refuſes to perform the work he has undertaken, ſhall be compelled to fulfil his agreement, firſt paying him his wages; but, if he perſiſt in his refuſal after receiving his wages, he ſhall forfeit twice their amount.

LXXIV.

CÁTYÁYANA:—He who begins, but does not perform,

form, his taſk, ſhall by force be compelled to finiſh it; if he refuſe to do ſo, he incurs an amercement.

LXXV.

VRÍHASPATI:—He who has promiſed to perform work, and does it not, ſhall be compelled even by forcible means; and if he *ſtill* refuſe to complete it, he ſhall be fined two hundred *panas* of copper.

This promiſe, *or agreement*, from the correſpondence of the text of CÁTYÁYANA (LXXIV), extends to the commencement of the work. The *Retnácara*.

The texts muſt be diſtributed to different caſes, for the purpoſe of reconciling the *ſeeming* contradiction between this fine of two hundred *panas*, and the fine of eight *crĭſhnalas* or *raćticás*, directed in a text which will be quoted from MENU (LXXVI): and their inconſiſtency with the text of YÁJNYAWALCYA, which directs a fine equal to the amount of the wages (LXXII), muſt alſo be explained.

For this purpoſe, ſome hold, that, if a man, not having received his wages, go elſewhere through avarice, he ſhall be fined their full amount; if, through indolence, he do not perform the work, two hundred *panas;* but if he do not begin the work, eight *crĭſhnalas* or *raćticás*. Others think, he ſhall be made to pay the full amount, in the caſe of wages *ſettled* by contract; and the fine is two hundred *panas* and the like, in the caſe of wages by the month or the like. Others again affirm, that twice the amount of the hire is paid to the maſter, and two hundred *panas* to the king: and in like manner, the full amount of the wages, twice their amount, the ſeventh part and ſo forth (LXXXVII) are payable to the maſter; and the two hundred *panas*, and other fines, to the king.

If it be ſaid, that in a text above quoted (LXXI) a forfeiture of wages is ordained, which is inconſiſtent with the direction for compelling the ſervant *to perform the work* (LXXV); it is reconciled from the rule propounded by CÁTYÁYANA (LXXIV):

paying

paying his wages, he may by force compel him; but if he *ſtill* refuſe to perform it, he incurs the forfeiture of his wages, and an amercement.

LXXVI.

MENU:—That hired ſervant, or workman, who, not from any diſorder, but from inſolence, fails to perform his work according to his agreement, ſhall be fined eight *crĭſhnalas* or *raćticás* of gold, and his wages or hire ſhall not be paid.

"Not from any diſorder;" not from the act of GOD or of the king, by which he might be diſabled from performing it.

The *Retnácara*.

LXXVII.

MENU explains *crĭſhnala*:—The very ſmall mote, which may be diſcerned in a ſunbeam paſſing through a lattice, is the leaſt viſible quantity, and men call it a *traſarénu*;

2. Eight of thoſe *traſarénus* are ſuppoſed equal in weight to one minute poppy-ſeed; three of thoſe ſeeds are equal to one black-muſtard ſeed; and three of thoſe laſt, to a white-muſtard ſeed:

3. Six white-muſtard ſeeds are equal to a middle-ſized barley-corn; three ſuch barley-corns to one *crĭſhnala*; five *crĭſhnalas*, or *raćticás* of gold, are one *máſha*; and ſixteen ſuch *máſhas*, one *ſuverna*.

The whole meaning is, that a *crĭſhnala* is a quantity of gold weighing one *raćticá*, or ſeed of the *gunjá* *.

CULLÚCABHATTA ſays, ſervants ſhall be fined eight *crĭſhnalas* or *raćticás* of gold, and the like, according to the work. By the term "and the like" muſt be underſtood *raćticás* of ſilver, copper,

* The *abrus* of Botaniſts.

per, or other *metals*. He thinks the denominations, as far as *crifhnala*, are common to all metals; and the name of *ſuverna* only peculiar to gold.

The ſame legiſlator declares the rule, when a ſervant, from diſeaſe, not from inſolence, fails in performing the work.

LXXVIII.

MENU:—Yet, whether he be ſick or well, if the work ſtipulated be not performed *by himſelf, or by another for him*, his whole wages are forfeited, though the work want but a little of being complete.

If he do not perform it himſelf, or by means of another. "Though it want but a little;" though a trifle only be unfiniſhed. The *Retnácara*.

Having abandoned his work on account of ſickneſs, if he do not complete it when recovered, no wages ſhall be paid for the work performed, although a trifle only remain *to be done*. CULLÚCABHATTA.

Here, and in the text of NÁREDA (LXXIX), the whole wages are mentioned.

LXXIX.

NÁREDA:—He who *is hired for a time*, and leaves his work before the expiration of the full term, ſhall forfeit all his wages: *but*, if he deſiſt by the fault of his maſter, he ſhall receive as much as was ſtipulated.

Therefore, if he leave the work by his own fault, no wages whatever ſhall be paid; but if he deſiſt by the fault of his maſter, before the full time has elapſed, he ſhall receive ſo much wages as were ſtipulated. The *Retnácara*.

Others ſay, the text of MENU (LXXVIII) concerns wages

ſettled by contract; thus, if wages be ſtipulated according to the work, without any time ſpecified, and if the work be not performed in conſequence of diſeaſe or the like, even though it want but little of being complete, the ſervant ſhall not receive the wages ſtipulated. But the text of NAREDA (LXXIX), *they think*, relates to one not prevented by diſeaſe. However, that has not been ſtated by reſpected authors.

LXXX.

VISHNU: — A ſervant, or *workman by time*, who leaves the work before the expiration of the full term, ſhall forfeit the whole price of his labour, and pay one hundred *panas* to the king. Whatever may be injured by his fault, he ſhall make good to his maſter; unleſs the injury happen by the act of GOD or of the king. If the maſter diſmiſs the ſervant before the full time has paſſed, he ſhall pay him his whole wages, and a hundred *panas* to the king, unleſs the ſervant were in fault.

CHANDÉSWARA explains wages or hire (*the literal ſenſe of* bhṛiti), hire to be earned by work; a ſervant, who leaves that (*meaning one who leaves his work*), unleſs by the fault of his maſter, ſhall forfeit the price of his labour. Thus a ſervant, leaving the wages which were paid him, leaving a part of them *unearned* by compariſon with the quantity of work performed, ſhall forfeit his whole wages; and pay a fine of one hundred *panas* to the king. In the *Chintámeni* the text is read, "a ſervant, who leaves his work (*carma*) before the expiration of "the full term." The ſenſe is obvious.

LXXXI.

MENU;—But, if he be really ill, and, when reſtored to health, ſhall perform his work according to his

his original bargain, he ſhall receive his pay even after a very long time.

But he who, leaving his work on account of ſickneſs, performs the ſtipulated taſk when he recovers health, ſhall receive his hire even after a very long time. So the *Retnâcara*, with which CULLÚCABHATTA concurs.

If he quit his work when ill; but, when reſtored to health, perform it even after a long time, he ſhall receive his pay. Thus the *Chintâmeni*, with which the *Mitâcſharâ* coincides.

As for the expoſition, that a ſervant who quits his work from indiſpoſition, and performs it after his recovery, ſhall receive his pay for the period of his indiſpoſition, even though it be a very long time, that would be wrong: for pay cannot be due without work performed; and it is inconſiſtent with *the commentaries of* many authors.

LXXXII.

NÁRADA;—If a load be damaged by the carrier's fault, whatever is loſt he ſhall be compelled to make good, unleſs the injury happen by the act of GOD or of the king.

"A load;" a thing on which the hired ſervant is employed. "Damaged;" *literally*, broken. "By the carrier's fault;" by the fault of the hired ſervant. The *Retnâcara*.

Conſequently this text does not concern a carrier alone, but any hired ſervant. It ſhould be conſidered, that, ſince the term "carrier" muſt neceſſarily have a general ſenſe, it may relate to every ſort of ſervant or labourer.

LXXXIII.

Vriddha MENU:—A ſervant ſhall pay the full value of what he has loſt by mere inattention; twice the value of what he has loſt by groſs negligence,

or

or malice; but he ſhall not be forced to pay any thing for what robbers have ſeized, for what has been burned, or for what an inundation has carried away, *unleſs he were himſelf blameable.*

The text is merely an inſtance given. Thus, if the loſs happen by the ſervant's fault, but unintentionally, he ſhall be compelled to pay the full value; if it happen by his fault, and intentionally, twice the value: but, for a caſual loſs, without any fault on his part, he ſhall not be forced to pay any thing. This virtually is the meaning. The *Retnâcara* and *Chintâmeni.*

LXXXIV.

VRIHASPATI:—If a ſervant, by the command of his maſter, and for his benefit only, do an improper act, the offence ſhall be imputed to the maſter.

"For his benefit *only;*" for the benefit of the maſter *alone.* "An improper act;" ſuch as theft or the like. "The offence ſhall be imputed to the maſter;" not to the ſervant.

The *Retnâcara.*

It appears from the condition, "by the command of his maſter," that, if he perpetrate a crime not commanded by his maſter, even though he intend his benefit only, the blame is not imputed to the maſter. But if it be argued as proper to affirm, that the maſter does not partake of the guilt, when a ſervant, even by his maſter's command, does an improper act for no advantage, or for his own benefit only, *the anſwer is,* when a maſter commands a ſervant to commit a robbery or the like, for no advantage to himſelf, ſtill he derives benefit *from the act* by *ſome* gratification *it affords him;* and if he authorize it for the ſervant's benefit, he derives *ſome* advantage, by the ſaving of wages or the like. But if the ſervant aſk, "may I ſteal that man's goods?" and the maſter reply, "ſteal them," reflecting, "he is poor, what motive have I for oppoſing his wiſh?" in that caſe the maſter, though he au-

thorize the theft, does not partake of the guilt *. For this purpoſe the Sage has ſaid, " for his benefit only."

LXXXV.

YÁJNYAWALCYA:—A carrier ſhall be forced to make good a load *damaged or* loſt *by his own fault*, not by the act of GOD or the king; and if he diſappoint the purpoſe *for which he is employed*, he ſhall be compelled to pay twice the amount of his wages.

" Not by the act of GOD or the king:" this denotes a fault on the part of the ſervant. The *Retnâcara*.

A load, to which no accident happens by the act of GOD, or of the king, is ſo deſcribed. If that be loſt by a carrier through inattention, he ſhall be forced to make good the amount of the loſs which is incurred on that load.

Again, he who previouſly undertook a taſk requiſite for the purpoſes of a maſter buſied in preparations for nuptials, when the auſpicious day is near, but afterwards diſappoints the purpoſe by refuſing *to perform the work*, ſhall be compelled to pay twice the amount of his wages. The *Mitácſharâ*.

Here " purpoſe " is employed in a general ſenſe: twice the amount of the wages muſt be paid for the mere diſappointment of any buſineſs previouſly undertaken; but if the buſineſs cannot fail, the penalty is the full amount of the wages *only*. So others, who follow the *Mitácſharâ*. But the author of the *Retnâcara* ſays, the word " carrier " ſhould be brought forward; " a carrier, having received his hire, and not departing at the time when the buſineſs ſhould be done, &c." In effect there is no difference. Thus the amercement for him who abandons his work has been already declared; the penalty, in the caſe of failure of the buſineſs in conſequence of his not performing his taſk, is now propounded: loſs is here the ſubject. Such is the meaning of both *commentators*. This penalty may be incurred if the buſineſs might be greatly injured; for the ſervant does not diſappoint

* I hope no native lawyer will ever be guided by this ſtrained interpretation. T.

diſappoint it, if it be accidentally accompliſhed. The following text makes this evident:

LXXXVI.

Vrĭddha MENU:—He who does not perform his taſk at the full time *agreed on*, and diſappoints the buſineſs, ſhall be forced to pay twice the amount of his wages; and another ſhall be employed in his ſtead.

LXXXVII.

YÁJNYAWALCYA:—One who declines *the work* when yet diſtant, *ſhall be compelled to pay* the ſeventh part of the wages, or the fourth part if *he decline it* on the way; but he who quits it half way, ſhall be forced to give the full amount of the wages.

"When *yet* diſtant," "on the way," and "half way," are explained by the circumſtances of another ſervant being found with eaſe, with difficulty, or with greater difficulty.

In theſe inſtances, according to the circumſtances of each caſe, the carriers ſhall be compelled to pay a ſeventh, or a fourth part, or the full amount of their hire. A maſter, alſo, diſmiſſing a ſervant at theſe periods, ſhall be forced to give the ſame.

CHANDÉSWARA.

This is *apparently* inconſiſtent with the payment of twice the amount of the wages, as above mentioned; but is reconciled according to CHANDÉSWARA, by directing the payment of twice the amount of the wages, if a ſervant cannot be found by any means. If this be ſaid to contradict the text of *Vrĭddha* MENU (LXXXVI), *the anſwer is*, the text of *Vrĭddha* MENU ſhould be underſtood as relating to a caſe in which it is apparently impoſſible to find another ſervant, but in which, after deſertion, another ſervant is accidentally found. If another ſervant can be

immediately found, a ſeventh part muſt be paid by him who abandons work to which he has himſelf agreed: but he muſt pay twice the amount of his hire, if he decline the work at the moment when it ſhould be commenced. Again, he who deſerts his employer when a diſtant portion of the way remains untravelled, ſhall pay a fourth part of his wages, or their full amount if he quit him half-way. The maſter alſo, in ſimilar circumſtances, ſhall pay the proportions of the hire mentioned in this text. Such is the opinion expreſſed in the *Mitácſharà*.

The meaning is this: at home, a maſter occupied in other buſineſs *(and therefore at leiſure from the buſineſs in queſtion)* can find another ſervant without trouble; the fine is therefore a ſeventh part, becauſe the offence is very inconſiderable. A ſervant, who inſolently ſays at the moment of departure, "I will not perform *the contract*," offends greatly, and ſhall therefore be fined in twice the amount of his wages. Travelling on the road, and leaving his work at a near place, he does not inſolently refuſe the *work*, neither can another ſervant be found without trouble; therefore he ſhall be fined a fourth part of the wages: but, deſerting *his employer* at a diſtant place, he is a greater offender, and ſhall therefore be amerced in the full amount of his wages. Thus the text (LXXXVII) is expounded in the ſame manner, *both* by CHANDÉSWARA, and by the author of the *Mitácſharà*. But, the caſe of one who diſappoints the purpoſe *for which he is employed* (LXXXV), is different.

LXXXVIII.

Matſya-puràna:—He who does not perform *buſineſs of* ſcience or art, after receiving a conſideration, ſhall be amerced in the full amount of it, by a king who knows the law.

Here the conſideration muſt be repaid to the perſon who employed him for ſcience or art; as it is repaid to a maſter by a ſervant who does not perform the work: but a fine to the king is not here mentioned. However, it is directed under a former head.

LXXXIX.

LXXXIX.

NÁREDA:—The owner of goods, who hires beaſts for draught or burden, and takes them not, ſhall be compelled to pay a fourth part of the hire; or the full amount, if he leave them on the road.

2. And ſo ſhall a carrier forfeit his hire, if he tranſport not *the goods.*

"The loader;" the owner of goods. "Hiring;" procuring on hire. "Beaſts for draught or burden;" horſes and the like, or oxen and the reſt. "A carrier;" one who receives hire for the carriage of goods. CHANDESWARA.

But others ſay, ſince the loſs of the whole hire, or of a fourth part, is directed in caſe of deſertion on the road, he who declines the work when *the time for performing it is* yet diſtant, ſhould pay a ſeventh part; and the rule, in regard to the forfeiture of a fourth part, ſhould be underſtood as explained in the former text (LXXXVII).

XC.

Vřiddha MENU:—Should a merchant, *having hired a ſervant for a certain journey,* ſell his goods by the way, and diſcharge the ſervant, *wages* muſt be paid even for the part of the way which they never paſſed; but the ſervant ſhall receive half only of the hire *which would have been due if they had gone to their journey's end.*

"The part of the way which they never paſſed;" ſo much of the journey as remains untravelled. The *Retnácara.*

"Even for the part of the way which they never paſſed;" to the ſervant, though he have not travelled the whole diſtance previouſly ſtipulated, wages ſhall be paid for the work done; but half, or a portion only, of the hire, for the part of the way which they have not paſſed. The *Chintámeni.*

On the queſtion, whether wages ſhall be withheld becauſe they have not gone the *whole* journey? the text declares wages ſhall be paid, becauſe the ſervant is not in fault. This may be ſtated as meant in the *Retnácara*. The word "half" is not here intended for equal parts, but a portion in general, as interpreted in the *Chintámeni*; "he ſhall receive a part of the wages for going that journey, though he have not travelled the *whole* diſtance:" and this is reaſonable, ſince the penalty of a fourth part of the hire is directed for deſertion on the way: but in this caſe ſomething leſs than a fourth part muſt be paid, ſince he diſcharges the ſervant becauſe he has not occaſion *for his ſervice*. And this text may be *literally* applied to the caſe of his ſelling the goods half-way.

XCI.

CÁTYÁYANA:—And if the goods be ſtopped or ſeized on the way, the ſervant ſhall receive wages for ſo much of way as has been paſſed by him.

"Be ſtopped;" be ſold in conſequence of being ſtopped by any perſon. MISRA and CHANDÉSWARA.

The ſenſe is, that, ſince the diſmiſſion of the ſervant does not ariſe from the merchant's own choice, greater wages ſhall not be paid.

XCII.

NÁREDA:—A ſervant ſtipulating *wages for a journey*, but leaving the cart on the way, ſhall be forced to give a ſixth part of thoſe wages; but the man who employs labour, and pays not *its hire on demand*, muſt *afterwards* pay it with intereſt *computed from the ſixth month after the demand*.

He who ſtipulates wages on an agreement in this form, "I will go *the journey*," but leaves on the way the goods for which the cart was hired, ſhall be compelled to give a ſixth part of the amount

amount ſtipulated as wages. Such is the ſenſe of the firſt part. The *Retnácara.*

And this muſt be explained by a particular application of the text *to a ſpecial caſe*, like the ſeventh part and the like ordained by YÁJNYAWALCYA and others (LXXXVII and LXXXIX).

But the maſter, if he do not pay the hire of the journey to the ſervant who goes *that journey*, ſhall be compelled to pay it with intereſt. The *Retnácara.*

It ſhould be mentioned, that intereſt on wages accrues ſix months after demand (Book I, v. LVI). Otherwiſe they do not bear intereſt (Book I, v. LXXI).

XCIII.

VRÍHASPATI: — The maſter who pays not the hire of labour after the work is performed, ſhall be compelled by the king to pay it, as well as a proportionate amercement.

It ſhould be here underſtood, as in the preceding text, that he muſt pay it with intereſt.

XCIV.

CÁTYÁYANA: — The maſter who leaves in the way a tired or ſick ſervant, without taking care of him in a village for three days, ſhall pay the firſt *or loweſt* amercement.

The maſter who, not taking care of him in a village for three days, leaves a tired or ſick ſervant, ſhall be fined by the king. The *Retnácara.*

By the word "leaves," want of care is implied. That it would be an offence in a tired ſervant to leave the work, *though* able to carry the burden after recovering from his fatigue, has been poſitively declared by former texts.

Harlots have been conſidered by CHANDÉSWARA and others,

under the title of Hire; wherefore they are alſo noticed *in this work*.

XCV.

NÁREDA:—A dancing girl, having received her pay, yet refuſing to attend, ſhall pay twice as much as ſhe received; and if her employer refuſe to admit her, he ſhall forfeit what he had paid.

XCVI.

Smriti:—But if the harlot attend not when ſent for, becauſe ſhe is indiſpoſed, or fearful, or fatigued, or employed in the ſervice of the king, ſhe is blameleſs.

XCVII.

*Matſya-purána**:—A harlot who goes to another man after receiving hire, and repays not the money received, ſhall be compelled to pay the lecher's fee, *or twice the amount*.

2. A man approaching a woman without paying her hire, or approaching her in an unlawful manner, or ſcratching her with his nails, or the like,

3. Or unnaturally abuſing her perſon, or cauſing her to be approached by many, ſhall be compelled to pay eight times the amount of the hire *promiſed*, and an equal fine.

4. He

* I might have been juſtified in omitting theſe laws, by the remark of Sir WILLIAM JONES, when tranſlating other texts under this head from the *Vivádárnava-Sétu*, that "the reſt are not worth inſerting." I am certainly juſtified in ſoftening the original indelicacy, and in omitting a groſs commentary on theſe and on the preceding texts; for they are ſurely miſplaced in a digeſt of law on contracts and ſucceſſions. T.

4. He who, on the pretence of one perſon, brings a harlot for the uſe of another, ſhall be amerced by the king in one *máſha* of gold.
5. If a man employ a dancing girl, and give her no pay, he ſhall be compelled to give her twice as much as ſhe ought to have received, and ſhall pay a fine to the king of the ſame amount. Thus juſtice is not violated.
6. The penalty ever to be paid by many perſons approaching the ſame woman, is twice the amount *of what ſhe ſhould have received if approached by one only*, and each of them ſhall likewiſe pay twice the amount as a fine to the king.

XCVIII.

NÁREDA :—If a diſpute ſhould ariſe among the laſcivious frequenters of her houſe, in reſpect of matters occurring there, the wife have declared, that it ſhall be determined by the principal harlot.

The hire of a houſe or the like is ſimilar to the hire of labour ; it is therefore diſcuſſed by authors in this place. That ſhall be now propounded :

XCIX.

NÁREDA : — He who dwells in a houſe which he built on the ground of another man, and for which he pays rent, ſhall take with him, when he leaves it, the thatch, the wood, and the bricks ;
2. But if he live without paying rent on the ground of another without the owner's aſſent, he ſhall by no means, when he quits it, take away the thatch and the timber.

" Rent ;"

" Rent ;" a conſideration for abode. The *Retnâcâra*.

It may be explained " hire " and ſo forth.

He who dwells in a houſe built at his own charge, or by his own labour, on the land of another, uſed for the ſite of dwelling-houſes, may, provided he paid rent for it, take away his own wood, and the bricks of walls and the like, when he ſhifts his abode ; or he may ſell the wall as it ſtands. But if he pay no rent whatever, he ſhall not take the graſs, wood, bricks, and other component parts of the houſe.

The hire of a houſe is common in royal cities : in other inſtances alſo, what is uſually paid in the ſame form with revenue, by tenants reſiding on the land of *Brâhmanas* and the like, is merely hire or rent : for it is not truly revenue, ſince revenue or taxes are the ſixth part *of the produce* and the like, *payable to the king, as ordained by the law.*

C.

NÁREDA :—The graſs, wood, and bricks, which are thus removed, belong to him who leaves the ground, provided he paid rent for the ſpot, and not otherwiſe.

In the former texts it had been mentioned, that, *in one caſe*, he may take them ; *in the other*, he may not take them. That *diſtinction* is grounded on property, and on the want of property. Theſe, therefore, are now explained in this text.

" If he paid rent ;" if he paid the price of the abode *granted to him.* The *Retnâcara.*

CI.

CÁTYÁYANA :—He who hires, at a fixed rent, a houſe, a pool of water, a market-place, or the like, ſhall be compelled, *in a court of juſtice*, to pay the rent of it, until he reſtore it to the owner.

" A pool

"A pool of water;" one made by another man, and not conſecrated, *but* intended for *uſe in* this world.

The *Retnâcara* and *Chintâmeni*.

It appears, therefore, that no rent ſhould be paid for a conſecrated pool to him who made it.

CII.

NÁREDA:—He who hires, at a fixed price, an elephant, a horſe, a bull or cow, an aſs, or a camel, ſhall be made to pay for the hire of it as long as he delays to reſtore the cattle, having uſed it according to agreement.

If a thing hired be deſtroyed, it is the poſſeſſor's fault, unleſs the injury happen by the act of GOD: as mentioned under the title of Depoſits.

CIII.

Vriddha MENU:—He who has hired a carriage, or *vehicle of any ſort*, and takes it and goes away with it, but *afterwards* refuſes to pay the hire, ſhall be compelled to pay it, even though he never uſed the carriage.

"A carriage" generally; meaning only a vehicle of any kind. "Even though he never uſed it;" even though nothing have been carried on it. The *Retnâcara*.

In the *Chintâmeni* alſo, the laſt remark occurs; and it is ſaid, a vehicle in general is alone meant. But the ſame rule may be applied to a houſe and the like.

CIV.

NÁREDA: — Things hired *for a time* at a ſettled price, let the hirer give back when the time has elapſed:

elapſed: whatever be broken or loſt he ſhall make good, except in the caſe of inevitable accident or irreſiſtible force.

" Settled price ;" hire. " Inevitable accident, or irreſiſtible force ;" the act of GOD, or of the king. Therefore, a carriage and the like, broken without the act either of GOD or of the king, muſt be made good by the hirer. When the time has elapſed, the thing hired ſhould be reſtored to the owner.

The *Retnácara.*

Conſequently, ſhould a carriage or the like, hired at a ſettled price, be loſt without the act of GOD or of the king, it is the hirer's fault, as appears from this law. But MISRA expounds the text, " if it be not reſtored when the time has elapſed, and it be deſtroyed by time or the like, without the act of GOD or of the king, it muſt be made good by the hirer." In his opinion, a thing loſt or injured by the fault of the hirer, without the act of GOD or of the king, muſt be made good by the hirer ; as appears from texts cited in Book II, on the ſubject of Depoſits and other Bailments.

CHAP.

CHAP. II.

ON THE NON-PERFORMANCE OF AGREEMENTS.

ALTHOUGH nonpayment of wages and hire occur among diſputes between maſter and herdſman, (for which reaſon this title is delivered by VRĬHASPATI immediately after that of nonpayment of wages, and diſputes between maſter and herdſman are placed firſt in the *Retnácara* and other works,) yet nonperformance of agreement has been propounded by MENU immediately after nonpayment of wages: wherefore it is firſt inſerted *in this digeſt, (before conteſts ariſing between the owners and keepers of cattle.)*

I.

MENU: — This is the general rule concerning work undertaken for wages or hire: next, I will fully declare the law concerning ſuch men as break their promiſes.

"This general rule" *is fully declared:* although the wages of herdſmen have not been yet propounded by MENU, the rule in caſe of nonpayment has been delivered, and the wages will be explained *under a ſubſequent head.* "Next, I will fully declare &c." breach of promiſe, ſuch as the nonperformance of actual agreements,

agreements, ſuggeſted *for conſideration* by breach of compact between maſter and ſervant, is *next* propounded.

The text is thus expounded by CULLÚCABHATTA; "this rule concerning work, under the title of Non-payment of Wages, has been completely delivered: I will next declare the rule of puniſhment for thoſe who violate their engagements."

II.

VRÍHASPATI:—This conduct has been preſcribed to maſters and ſervants; now learn conciſely the rules concerning promiſes.

"Preſcribed to maſters and ſervants," including maſter and herdſman; for that title of law is previouſly delivered by VRÍHASPATI. The preſent title of Non-performance of Agreements is expounded by CULLÚCABHATTA (in *his gloſs on* the fifth verſe of the eighth chapter of MENU) "breach of an agreement made." NÁREDA explains it:

III.

NÁREDA:—The *general* rule ſettled among irreligious men, and among citizens and the like, is named a compact; *and* the title of law concerning diſputes ariſing thereon, is called breach of compact.

"*Páſhenda*, or irreligious;" excluded from the triple *Véda*, as the *Yavanas* and others. "Citizens;" townſmen. "And the like;" this term intends companies of traders, artiſans, &c. "The rule ſettled," as will be mentioned. An agreement for ſtipulated duties, violated by non-performance, *is the ſubſequent title.*

The *Retnâcara.*

Thus the breach of a general agreement, in this, or other form, "we will join to repel thieves and robbers," is a breach of promiſe. An agreement for ſtipulated duties is a compact; non-performance

performance of it is a breach of compact; and the government of thoſe who break their engagments, forms a title of law. A ſimilar expoſition is given in the *Mitácſharâ*.

IV.

YÁJNYAWALCYA:—Having erected a building in the town, and endowed it, and having placed there *Bráhmanas* learned in the three *Védas*, let the king enjoin them to obſerve their duty.

Having erected a building, or houſe of maſonry, or the like, in the town or city, and having placed there *Bráhmanas* learned and virtuous, let him give this injunction, "obſerve your duty."

Having erected an endowed building; an edifice enriched by a grant of gold or the like. Such is the meaning, on the concurrent expoſition of the *Mitácſharâ* and *Retnácara*. Endowed with land, money, or the like, whereon the prieſts reſiding there may ſubſiſt. The intention is, that he ſhould aſſign land, money, or the like, for their maintenance. The Sage declares what ſhould be done by *Bráhmanas* ſo enjoined to obſerve their duty.

V.

YÁJNYAWALCYA:—Duties which are ſtipulated or ſeaſonable *(for* ſámayica *may bear either ſenſe)*, or preſcribed by the king, and *which are* not inconſiſtent with their own *regular* duties, ſhould alſo be diligently obſerved *by thoſe prieſts, and enforced by the king.*

Duties ariſing from compact, or occurring from ſeaſon, and conſiſtent with moral and civil law, ſuch as care of cattle, preſervation of water, management of temples, and the like, ſhould be diligently obſerved. And the king ſhould enforce the obſervance of ſeaſonable duties, not inconſiſtent with *regular* duty, ſuch

as the entertainment of all travellers, and a rule that horſes and the like ſhall not be carried to the dominions of his enemy.

The *Mitácſharà*.

It follows, that the prieſts collectively, and the king, are the perſons by whom theſe duties ſhould be obſerved. But "ſeaſonable" is explained in the *Retnácara*, '*rites* for the happineſs of ſociety.' Such are monthly benedictions pronounced for the king; and monthly deprecation; and ſimilar duties preſcribed by the ſovereign.

Others hold, that YÁJNYAWALCYA here explains the ſenſe of the word, "duty," in the expreſſion "enjoin them to obſerve their duty;" acts which are ſeaſonable, or preſcribed by the king, and not inconſiſtent with their own regular duties. Thus it follows, from the word "alſo," that the duties of their tribe and order muſt certainly be obſerved: the preſcribed acts of their tribe and order, ſeaſonable duties, and thoſe commanded by the king, are intended by the term "their duty." Seaſonable acts have been explained by authors, as above. "Duties or rules preſcribed by the king" are ſuch as the following; "for this man, though not degraded, yet fallen under the king's diſpleaſure, no ſacrifice ſhall be performed." Theſe rules muſt be obſerved, if they be not inconſiſtent with regular duty. Therefore, an injunction to attend at the king's gate from dawn to evening, or to ſacrifice for all the inhabitants of a town, need not be obſerved; for it would obſtruct the whole of the rites conſtant and occaſional, or be incompatible with ſacrificing for twice-born claſſes only. *Yet*, on particular occaſions, an obſtruction to *the performance of* conſtant rites may be admitted. As for the opinion, that a duty occurring with the ſeaſon, ſuch as deprecatory rites and the like, muſt neceſſarily be performed, though not promiſed, it is wrong: for it is founded on no authority, and puniſhment is directed for breach of promiſe only.

VI.

VRÍHASPATI: — Aſſembling prieſts endued with knowledge of the *Véda*, learned teachers of the ſcripture, and prieſts who keep a perpetual fire for oblations,

oblations, let the king eſtabliſh them in that place, and aſſign their ſubſiſtence :

2. Let him grant to them, in his own dominions, houſes and land exempt from taxes, declaring, by a written grant, that the royal dues are remitted :

3. They muſt perform, for the townſmen, the conſtant, occaſional, and voluntary rites, and thoſe which are deprecative, or expiatory, and they muſt decide doubtful caſes.

4. A compact, formed on conſultation among the inhabitants of a town, the companies of artiſans, and the ſeveral claſſes of men, muſt be obſerved in a time of alarm, and at the ſeaſon of rites *performed in common*, and alſo *on other occaſions*.

5. If there be apprehenſion of highway robbers or thieves, it is conſidered as a common danger; and ſhould be repelled by all, not in any inſtance by one alone.

6. Firſt eſtabliſhing mutual confidence, by a ſolemn oath, by a written contract, or by the atteſtation of witneſſes, let them next proceed to the buſineſs *agreed on*.

7. Neither men influenced by *cauſeleſs* enmities or paſſion, nor ſuch as are fooliſh, indolent, timid, rapacious, diſeaſed, or aged, nor infants, may be appointed *chief* adviſers in affairs (*cárya chintaca*);

8. But thoſe who are pure, who know the ſcripture and their *own* duties, who have dominion over their paſſions, who are capable, who ſprung from honeſt families, and are ſkilled in all affairs, may be appointed higheſt *of the confederacy*.

9. Two, three, or five perſons ſhould be appointed adviſers (*hitavádin*) of the aſſociation; their coun-

ſel ſhould be followed by the inhabitants of the town, the companies of artiſans, and the ſeveral claſſes of men.

"*Srôtriyas*;" *learned* teachers of the *Véda*. "Houſes and land" (VI 2), in the active *inſtead of the oblique* caſe, may be reconciled from the licenſe of a Holy Sage. "In a ſtate of exemption;" the royal dues being remitted. CHANDÉSWARA.

"They muſt perform" &c. (VI 3); ſuch a practice occurs in ſome countries, where a perſon is commiſſioned, and a prieſt is appointed, to perform the conſtant and other rites for the townſmen; and it appears that the prieſt is veſted with property, conſiſting in that office, by the authority of a mandate from the reigning king.

"And decide doubtful caſes" (VI 3); caſes relating to judicial conteſts. This is a juſt interpretation, and conſiſtent with ordinances.

"The inhabitants of the town" (VI 4); *literally*, the town; intending the inhabitants collectively. "Companies of artiſans;" meaning a body or multitude of perſons belonging to the ſame tribe, and following the ſame profeſſion. "The ſeveral claſſes;" *Bráhmanas* and the like collectively. CHANDÉSWARA.

"Companies of artiſans;" workmen or artiſans collectively. The *Chintámeni*.

What is done after conſultation, by theſe bodies and companies, or by any of them, is a compact or agreement. The Sage explains the motive and ſeaſon of ſuch an agreement ("in a time of alarm" &c. VI 4). "Alarm;" apprehenſion, or ſuffering, from robbers or the like. "Rites to be performed *in common*," ſuch as faſts and other ſacraments. So MISRA. CHANDÉSWARA alſo expounds it ſimilarly. By the words "or the like," it is indicated, that an aſſociation ſhould alſo be formed if injury be ſuffered from the inhabitants of a different town, or from other inhabitants of the ſame town. By the expreſſion "and alſo," it is intimated, that they proceed in the ſame manner on other occaſions, ſuch as general rejoicings and the like.

Thus it appears, that an agreement ſhould be made for repelling robbers and the reſt. The motive of a compact is thereby declared;

declared; the *proper* "ſeaſon" is obvious, (correſponding with the motive:) he declares the form *in a ſubſequent verſe* (VI 6).

"A ſolemn oath;" ordeal, as the contract of water which has touched *the images of* potent deities. The meaning of a "written contract" is obvious. "Atteſtation of witneſſes;" *literally*, intermediate perſons; intending perſons who become witneſſes of the compact, and are not partial favourers of any one. The literal ſenſe of the term intermediate, *(medhyaſt'ha,)* is one who ſtands between *(medhyé tiſhi'hati)*.

Thus any one of theſe three modes may be employed for the purpoſe of proving the agreement at a ſubſequent time. The conſtruction of the ſentence is, "eſtabliſhing confidence by any one of thoſe three modes."

Among thoſe inhabitants of the town and the reſt, if all had *equal* authority, no benefit would ariſe from their various degrees of wiſdom; therefore ſome ſhould be inveſted with chief authority, as adviſers in affairs, to ſhow the beſt *mode of proceeding*. What deſcriptions of perſons they ſhould not inveſt with principal authority, the Sage declares (VI 7). "Men influenced by *cauſeleſs* enmities; *literally*, inimical:" he who proceeds to an act without attention to the conſequences of it, is ſaid to be "influenced or impelled;" and the ſuffix here employed bears the ſame ſenſe with the term thus explained by JUMERA.

"Influenced by paſſion" (VI 7); under the impulſe of exceſſive luſt or anger. "Fooliſh:" the term is explained, in the *Retnácara*, incapable; but explained by GOVÍCHANDRA, in the *Sanchipta-sára-pariſiſhta*, "idiot."

From what deſcriptions of perſons they ſhould appoint their chiefs, the Sage declares (VI 8). "Pure," *that is, virtuous*; not deceitful. "Governing:" having dominion over their organs; void of avarice and the like. "Their counſel ſhould be followed;" conſequently a fine is incurred by a breach of their commands. This YÁJNYAWALCYA expreſsly declares:

VII.

YÁJNYAWALCYA:—The directions given by the adviſers of the aſſociation ſhould be obſerved by all;

he who diſobeys them, ſhall be compelled to pay the firſt amercement.

The firſt amercement; meaning two hundred and ſeventy *panas* of copper*. The *Mitácſhara.*

This offence conſiſts in diſobeying the directions given by the adviſers of the aſſociation; CÁTYÁYANA preſcribes a fine for him who, from inſolence, urges *too obſtinately* his own opinion during a diſcuſſion on buſineſs to be performed.

VIII.

CÁTYÁYANA:—He who interrupts the reaſonable diſcourſe of a ſpeaker, and allows no other to ſpeak, and he who talks idly, ſhall incur the firſt amercement.

"Who interrupts reaſonable diſcourſe;" who thus breaks in upon it, "you talk abſurdly:" one who mutters, "I alſo will ſpeak, why ſhould theſe talk?" "Who allows no other to ſpeak;" *literally*, giving no opportunity; one who gives no opportunity for others to ſpeak; or allows no other *to diſcourſe*, and prates much *himſelf*. Theſe, and he who urges bad advice, inſiſting that it ſhould be adopted as good, ſhall pay the firſt amercement.

In the *Retnácaca* it is explained, he who talks *idly* to the adviſers of the *aſſociation*. The ſenſe may alſo be thus ſtated; he who behaves with diſreſpect towards them.

IX.

YÁJNYAWALCYA:—This is the rule for companies of artiſans, traders, and irreligious men, and for *various* tribes; let the king preſerve their diſtinctions, and oblige them to adhere to the conduct above mentioned.

"Artiſans;"

* So the MS. It ſhould be two hundred and fifty *panas*.

"Artiſans;" ſubſiſting by the manufacture of the ſame commodity. "Traders" *(naigama)*: this word is explained as denoting the *Pásupatas*, and other ſectaries, who admit the authority of the *Véda* no further than as a good inſtitute. "Irreligious men:" thoſe who do not even admit the authority of the *Véda*; ſuch are dancers, followers of BUDDHA, and the like. "Tribes;" ſets of men living by the ſame profeſſion, ſuch as ſoldiers and the like. For theſe four deſcriptions of perſons, this is the rule, as propounded in the former text (V): Let the king preſerve their diſtinctions; the rule of duty for the artiſans and the reſt: and let him oblige them to adhere to the conduct above mentioned.

The *Mitácſharâ*.

Others take the word *naigama* in its literal ſenſe of trader, as it is explained in AMERA'S Dictionary.

Many texts delivered by YÁJNYAWALCYA immediately after that above quoted (V), will be cited in their places. By tribes are here meant other ſets of men beſides artiſans and the reſt, and different from *Bráhmanas*. The *Retnácara*.

Thus, in whatever tribe an agreement is made, by that *tribe* it ſhould be obſerved; it follows, that diſobedience to directions given by one who is appointed *prámánica*, or preſident, of barbers or the like, is a cognizable offence. This is the whole meaning.

X.

NÁREDA:—Let the king maintain the aſſociations of irreligious men, of ſectaries who detract from the authority of the *Véda**, of companies of artiſans, traders, and ſoldiers, and of various tribes and the like, both in a place of difficult acceſs, and in a frequented ſpot.

"Companies of traders" *(púga)*; merchants and the like collectively. Others explain it an aſſemblage of perſons of various claſſes, who have no determinate profeſſion. "Companies of

* *Naigama*: ſee the gloſs on the text of YAJNYAWALCYA (IX).

ſoldiers;" armed men collectively. "Varioûs tribes and the like;" the term "and the like" ſuggeſts multitudes and crowds.

The *Retnâcara.*

The term "and the like," including all deſcriptions, denotes *that others are* comprehended in thoſe *which are* noticed.

The *Chintámeni.*

XI.

NÁREDA:—Whatever be their duties, their *regular* buſineſs, and preſcribed rules, and whatever be the conduct enjoined to them, that *let the king* approve.

"Their duties;" their preſcriptive uſages. "Their buſineſs;" their proper occupation for a livelihood. "Conduct enjoined to them;" preſcribed behaviour. The *Retnácara.*

"That approve;" the word king muſt be ſupplied in the ſentence, "that let the king approve." Thus it is directed, that he ſhall not act otherwiſe than *is conſiſtent with* their preſcriptive uſages, and ſo forth.

XII.

CÁTYÁYANA:—Whatever be the duty of *particular* ſocieties, according to that let them conduct all affairs, *firmly* abiding by their own profeſſion.

This ſhould be underſtood as coincident with the preſcriptive uſages, or duties, mentioned by NÁREDA.

XIII.

CÁTYÁYANA:—The aſcertained commands of the king, not inconſiſtent with *regular* duty, ſhould in the firſt place be exactly performed as directed by the king.

2. The ſinful man, who obeys not ſuch ordinances as

as are made by the ſovereign, *and are not inconſiſtent with the divine law,* ſhall be rebuked and puniſhed as diſobedient to the royal command.

"Not inconſiſtent with *regular* duty;" the preſcribed acts by each claſs and order. "Whatever be the aſcertained command of the king" *(not repugnant to that duty)*, ſuch ſhould be the conduct *of the ſubject*. The Sage directs an amercement in caſe of diſobedience (XIII 2): neglect of the king's commands is ſubjoined as the cauſe of the offender's being deemed a ſinner. This offence conſiſts in the breach of allegiance. VRĬHASPATI now declares the engagements of ſocieties and the like:

XIV.

VRĬHASPATI:—"The conſtruction of a hall, of a "houſe of refreſhment, or of a temple, a pool or "a garden, relief to the helpleſs and poor, ſacri- "ficial rites,

2. "A common way, and mutual defence, ſhall be "effected by us, according to *our ſeveral* propor- "tions:" if ſuch a written contract be made, it is a binding engagement,
3. And muſt be obſerved by all. Of him who refuſes *his part*, though able *to perform it*, the puniſhment is forfeiture of all his property, and baniſhment from the town:
4. And for that man who contradicts *his aſſociates*, or neglects *his part*, a fine is ordained of ſix *niſhcas* containing four *ſuvernas* each.

In the caſe of an agreement for the conſtruction of a hall or the like, *which is* the higheſt aſſociation, if a man break his engagement, though able to perform it, he ſhall be puniſhed by confiſcation of all his property, and baniſhment from the country: and this puniſhment is directed for the caſe where he formally

ſaid, "I will perform it;" but now ſays, "I will not perform it." In caſe of neglect, another puniſhment is directed (XIV 4): *the firſt term in that text* is explained by AMERA, 'contradiction.' Thus, if a man, having previouſly formed an engagement, conſpire with ſome party to break it, he ſhall be fined in ſix *niſhcas*, containing four *ſuvernas* each; or if he be guilty of neglect, (that is, if he do not give attention to it,) he ſhall be fined in the ſame amount.

Others hold, that an adviſer in affairs *of the aſſociation* is guilty of neglect if he do not coerce one who refuſes *to perform his part*, and ſhall therefore be amerced: and any ſtranger alſo may be amerced, if he interfere to break the aſſociation.

"A common way" (XIV 2); *literally*, a family-way; a road for a family. "Mutual defence;" *literally*, reſiſtance; *meaning* oppoſition to the inroads of bad men. The *Retnácara*.

XV.

MENU: — The man, among the traders and other inhabitants of a town or diſtrict, who breaks a promiſe through avarice, though he had taken an oath to perform it, let the king baniſh from his realm.

2. Or, *according to circumſtances*, let the judge, having arreſted the promiſe-breaker, condemn him to pay ſix *niſhcas*, or four *ſuvernas*, or one *ſatamána* of ſilver, or all three *if he deſerve ſuch a fine*.

3. Among all citizens, and in all claſſes, let a juſt king obſerve this rule for impoſing fines on men who ſhall break their engagements.

"A town;" in its uſual ſenſe. "A diſtrict;" a number of towns. "Traders and others;" a multitude of perſons following the ſame profeſſion, but reſiding in ſeveral diſtricts. "Having arreſted" *(nigrihya)*; this may be expounded, having admoniſhed.

admoniſhed. Six *niſhcas*, or four *ſuvernas*: *the words may ſignify*, ſix of thoſe *niſhcas* which weigh four *ſuvernas* each; to exclude other quantities, namely the *niſhca* of one hundred and fifty *ſuvernas*, and the *niſhca* of five *ſuvernas*. The *Retnácara*.

MISRA delivers the ſame expoſition, and adds; "MENU here intends ſix *niſhcas*, and has further directed a *`satamána* of ſilver." A *`satamána* contains three hundred and twenty *racticás*, or ſeeds of the *gunjá*.

CULLÚCABHATTA holds, that, according to circumſtances which may aggravate or extenuate the fault, the puniſhment ſhould be exile, and fines of ſix *niſhcas* and one *`satamána*; all, or each of them.

Thus, in concurrence with VRĬHASPATI, exile *is the penalty directed* in caſe of refuſal; a fine of ſix *niſhcas*, in caſe of oppoſition or negligence; and a fine of one *`satamána*, in the caſe of a ſlighter offence.

"All claſſes" (XV 3); an aſſemblage of ſeveral claſſes.

The *Retnácara*.

XVI.

NÁREDA: — Thoſe eſpecially ſhould be puniſhed, who ſeparate *themſelves* from the aſſociation: they ſhould undergo fear and terror, being avoided like diſeaſed perſons.

"Who ſeparate from the aſſociation;" who violate the engagement formed by the community.

XVII.

YÁJNYAWALCYA: — Him who embezzles the property of the company, and him who violates his engagement, let the king baniſh from the realm, after confiſcating all his effects.

"The property of the company;" the joint property of all the citizens and the like. The *Retnácara*.

VIJNYÁ-

VIJNYÁNÉSWARA gives a ſimilar expoſition; but adds, that, "in the caſe of a breach of compact or engagement, enjoined by the king, or formed by the ſociety, if the offence be great, the penalty is baniſhment from the realm; but if the offence be ſlight, *it ſhould not exceed* the amercements above mentioned, as propounded by MENU."

Some explain it as intending the penalty for embezzling money ſet apart for the purpoſe of building a temple or the like.

XVIII.

CÁTYÁYANA: — BHRÍGU directs, that all thoſe who commit violences, oppoſe *the general will*, and diſſipate the wealth of the community, ſhall be puniſhed, after giving notice to the king.

"Who commit violences;" who uſe force againſt the ſociety, by blows and the like. "Who diſſipate the wealth of the community;" who deſtroy property amaſſed by the aſſociation for a temple or the like. "They ſhould be puniſhed:" they ſhould be fined in the amercement directed; for an amercement of ſix *niſhcas* is ordained in caſe of oppoſition. They ſhall not be baniſhed or expelled, *as the term* uchchédya *might ſeem to denote*. Or it may be underſtood, that, in caſe of oppoſition, if the offence be great, *the penalty is* expulſion.

XIX.

VRÍHASPATI: — He who injures or diſſipates the common ſtock, or breaks his engagement, ſhall be baniſhed from the town for that *offence*, even though he be learned in the triple *Véda*.

XX.

The Same. — An inſulting and malevolent man, one who

who oppoſes *the ſociety*, or commits violences, and an enemy to the company of artiſans, to the ſociety of traders, or to the king, ſhould be inſtantly baniſhed.

" Inſulting;" hurting *the* minds of others. " Malevolent;" inimical. The *Retnácara* and *Chintâmeni*.

XXI.

VRĬHASPATI: — Let the chiefs of families, of aſſociated artiſans, or of tribes, whether reſiding in towns or forts, curſe and forſake ſinners.

" Curſe;" puniſh with maledictions. The *Retnácara*. *By this text* it is thus declared legal for the chief of a family, or the like, to inflict puniſhment on offenders.

XXII.

VRĬHASPATI:—Whatever be done by them according to their duty, whether harſh or kind towards *other* men, ſhould be *firſt* approved *by their chiefs*: theſe indeed are conſidered as undoubted actors *in all affairs*.

" According to their duty;" not repugnant to it. " Undoubted actors;" undoubted *guides* in affairs. CHANDÉSWARA. Whatever buſineſs any perſon, included in the aſſociation, performs conſiſtently with regular duty, that ſhould have been *previouſly* authorized by the chief.

XXIII.

VRĬHASPATI: — If they conſpire, from an impulſe of enmity, to injure one *of the ſociety*, they ſhould be

be reſtrained by the king; and actual injuries ſhall be puniſhed.

Among aſſociates, if ſeveral unite to hurt one, the king ſhould reſtrain them; and if they do a wrong, by verbal deception or the like, he ſhall chaſtiſe them: and the puniſhment in this caſe ſhould be exile or the like, according to the magnitude of the injury.

XXIV.

VRĬHASPATI:—If a quarrel ariſe between the chiefs and the communities, let the king decide it, and reduce them to their duty.

If there be a diſpute between the communities and their chiefs, (meaning the perſons inveſted with authority, and called *preſidents* or *prámánica,*) let the king determine the controverſy according to the proof of their diſobedience to their chiefs; and in conſequence of his deciſion, either puniſhing or not puniſhing them, *or their chiefs*, according to circumſtances, let him reduce them to their duty. But if the diſobedience be heinous, baniſhment is proper.

XXV.

NÁREDA:—Promiſcuous aſſemblies of thoſe *perſons*, military array without cauſe, and reciprocal injuries, let not the king tolerate.

"Promiſcuous aſſemblies;" a ſuperior ſociety mingled with another of inferior rank. "Military array without cauſe;" without a ſufficient motive, ſuch as apprehenſion of danger and the like. "Mutual injuries;" reciprocal wrongs. "Thoſe *perſons;*" irreligious men and the reſt, as already mentioned by NÁREDA (III). The *Retnácara.*

Soldiers and the like may carry arms even without a ſpecial motive. The ſenſe reſulting from the text is, that the king

ſhould reſtrain all others from *meeting in* promiſcuous aſſemblies, *from carrying arms without cauſe*, and ſo forth.

XXVI.

CÁTYÁYANA: — He who *uſually* eats off the ſame veſſel, or in the ſame line with another, ſhall be amerced if he refuſe to do ſo without ſhowing a *reaſonable ground of* exception.

He who refuſes to do ſo, ſhall be amerced. The *Retnácara.*

It is cuſtomary, with ſome *tribes*, for many perſons to join and eat off the ſame veſſel. The rule is general: he who *uſually* eats another's food, may not, through perverſeneſs, without ſtating a reaſonable ground of exception, or other ſufficient cauſe, reject food given by that perſon. It may be *alſo* determined, that even if *the practice originated in ſuch motives as are mentioned* in the *Mahábhárata*, "through friendſhip food may be eaten *from each other's hands*, or it may be *ſo* eaten through extreme diſtreſs;" even when a motive *for refuſal* ſhould be ſhown, *namely*, a breach of that friendſhip which was the previous motive for eating food from each other's *hands*.

XXVII.

VRÍHASPATI: —Thoſe traders who conſpire to abſcond and defraud the king of his due, ſhall be compelled to pay eight times the amount.

Literally, the king's ſhare, *meaning* the king's due.

The *Chintámeni.*

Thus, if merchants going for the purpoſes of trade, and buying and ſelling goods, abſcond in the night, after promiſing to pay the king's taxes, he may take from them eight times the amount of his taxes; or in the ſame inſtance the chief of the company *may levy that penalty*. Theſe two laws concerning ſocieties (v. XXIV, &c. v. XXVII) are mentioned incidentally.

XXVIII.

XXVIII.

NÁREDA: — Let the king reſtrain them from acts which are injurious to him, which in their nature are vile, or which obſtruct his affairs:

2. And let a king who deſires proſperity, repreſs ſinful proceedings, which are unauthorized by moral law, if they be actually attempted.

Literally, diſapproved by nature; "acts which in their nature are vile." "Sinful proceedings," as the practice of gaming and the like; acts not productive of good. "Unauthorized by moral law;" not familiar under moral inſtitutions. "Reſtrain them;" the irreligious men and the reſt (III). The *Retnácara*.

Since whatever general agreement has been made by irreligious men and the reſt, muſt be obſerved; and if they break it, they muſt be puniſhed by the king; *it might*, therefore, *be inferred, that* every agreement, *even though illegal*, muſt be maintained: for inſtance, "we will all prevent the ſubjects from paying taxes to the king;" or, "let us always go naked;" or the following, "we will game; we will ſolace ourſelves with harlots; we will run on the king's highway; let us worſhip an ant-hill under a *Sácót'aca* tree*." It may be affirmed, that this text is intended to prevent ſuch an inference.

XXIX.

YÁJNYAWALCYA: — When their buſineſs is finiſhed, let the king diſmiſs thoſe who have attended for the affairs of a community, after honouring them with *tokens of* regard, with gifts, and with expreſſions of civility.

2. What-

* The rough-leaved trophis of Botaniſts, called in the vernacular dialects *Sábór'a* or *Syaura*. The author alludes to a proverbial expreſſion of contempt; "thou art like an ant-hill under a *Sábór'a* tree." The plant itſelf alſo furniſhes a contemptuous ſimile.

2. Whatever a man who is ſent on the affairs of a community ſhall receive, let him deliver *to his principals;* if he do not voluntarily deliver it, he ſhall be compelled to pay eleven times the amount.

Let the king, having finiſhed their buſineſs, diſmiſs perſons who have attended him on the affairs of a community, after honouring them with tokens of regard, with gifts, and with expreſſions of civility: ſuch is the meaning according to the *Mitácſharâ*.

"Tokens of regard;" allowing them ſeats and the like. "Gifts;" honorary preſents of clothes and the like. "Expreſſions of civility;" compliments. The meaning is, that attention ſhould be ſhown by the king to the affairs of a community.

The ſecond verſe is thus expounded by VIJNYÁNÉSWARA; a perſon deputed by merchants* to attend the king on the affairs of the community, ſhould, even unaſked, deliver to thoſe merchants whatever clothes, money, or other things may be received: otherwiſe he ſhall be compelled to pay a fine equal to eleven times the amount of what was received. Conſequently, whatever is given by the king, in an honorary form, to one deputed on the affairs of a community, ſhould be received by all the members of it.

XXX.

VRÍHASPATI:—Whatever he may there obtain, is the property of all *the aſſociates*, and ſhould be divided according to their ſeveral proportions, whether it have been received ſix months or one month.

"There;" at the king's palace. In declaring it the property of all, without a reſtriction, that only that which is given to all belongs to all, the meaning is this; whatever is received by ſome of the aſſociates, while attending at the king's palace, is the

* *Mehájen*, uſually employed in its literal ſenſe of a great or reſpected perſon; but here ſeems to ſignify a merchant, as in the common dialect.

the property of all. It is obſerved in the *Retnácara*, that "ſix months or one month" are mentioned in an indefinite ſenſe: conſequently it is meant that, after many days, they may collect and divide effects received: and that is optional.

XXXI.

VRÍHASPATI:—Or it ſhould be given to the poor, the aged, or the blind, to women or infants, to afflicted, diſeaſed, or childleſs perſons, or other *needy* people: this is the primeval rule.

2. What is acquired and kept by thoſe *members of a community*, or borrowed for the uſe of the ſociety, or obtained as a preſent from the king, is common to all *the aſſociates*.

"Diſeaſed;" other than one afflicted *with pain (ātura)*.
CHANDÉSWARA.

But HELAYÚDHA reads *acara* inſtead of *ātura*, and explains it handleſs, *or maimed*.

"Childleſs perſons or other *needy* people;" under this are comprehended others (beſides thoſe enumerated), who ſhould be maintained by the tribe, or by the company of artiſans or the like, and whom the Sage contemplated. CHANDÉSWARA.

"Poor;" indigent. Thus a gift to thoſe whom it is neceſſary to maintain, is approved; and that ſhould be in proportion to the reſpective ſhares of all the givers.

XXXII.

CÁTYÁYANA:—Whatever is borrowed on pretext of a community, and is conſumed or diſſipated for their own purpoſes, muſt be made good by thoſe *who borrowed it*.

"What is borrowed on pretext of a community;" under pretence

tence of the ſociety; by fraud in the name of the community; muſt be made good by the borrowers.

The *Chintámeni* and *Retnácara*.

"Diſſipated," *or aliened;* given away. This is merely an inſtance ſhown; the contracting of a debt is meant by the text. It is directed by VRĬHASPATI (XXXI 2), that a debt contracted on account of the community, ſhall in general be diſcharged by all *the members of it;* this text (XXXII) declares, that in ſome particular inſtances it ſhall not be *ſo* diſcharged.

XXXIII.

CÁTYÁYANA:—All thoſe who are admitted into a ſociety of *traders*, or company of artiſans, *or other community*, ſhare equally the previous ſtock and the debts.

Even thoſe who are ſubſequently admitted, by general conſent, into a ſociety or other community of traders or the like, become ſharers of the actual ſtock and debts, or of the capital inveſted in commerce and ſo forth.

The *Chintámeni* and *Retnácara*.

It ſhould be underſtood, that, if an agreement be made by general conſent, at the time of admiſſion, in this form, "I have no ſhare in the gain, loſs, or other *occurrence* prior *to admiſſion;*" in that caſe he does not partake of the gain, loſs, or the like. This is conſiſtent with reaſon.

XXXIV.

CÁTYÁYANA:—Thus alſo he who remains in the ſociety is a ſharer in *all* matters relating to proviſions, partible ſtock, gifts and duty; but he who forſakes it, is entitled to no ſhare.

The term, *all* matters, *or acts*, is referred to the other terms ſeverally. "Proviſions," or eatables; ſweetmeats and the like.

" Partible ſtock;" grain and the like. " But he who forſakes it, is entitled to no ſhare;" he who forſakes the ſociety, or withdraws himſelf from the community, on motives of his own, is not entitled to any ſhare. The *Retnâcara* and *Chintâmeni*.

The meaning is this: of what is conſumed by the ſociety, ſhares are received by thoſe only who remain in the community; and that which is diſtributed ſhall be ſhared by them only; not by thoſe who are out of the ſociety at the time of partition, on the grounds of their having been members of it when the effects were acquired. Moreover, if any thing be given, or any other legal act be done by any one member of the community, all the members of it are partakers of the act: and in the caſe of a gift made by one, it is a valid gift on the part of the whole community, provided the donation were made by him while he was a member of it.

Theſe engagements of members of communities have been propounded; the mutual agreements of two perſons ſhould alſo be diſcuſſed. For inſtance, " if thou giveſt *that*, then I will give *this*; if thou doſt *that*, I will do *this*; if thou doſt *that*, I will give *this*; if thou giveſt *that*, I will do *this*:" ſuch, and of many other ſorts, are mutual promiſes. In theſe inſtances, " if," or " when," denoting a contingency, and a contingency implying two parts, both payment and non-payment are ſignified. Thus, (from the general conſtruction of words mentioned in ſucceſſive order,) by expreſſing, " in caſe of thy gift *being delivered*, my gift *ſhall be delivered*," it is in effect declared, " my gift ſhall be withheld, in caſe thy gift be withheld:" therefore, the withholding of the gift is ſtated as one part of the contingency; and hence no other penalty is directed. But where the promiſe is a general declaration, aſcertaining work to be done, and wages to be paid, in this form, " thou ſhalt perform the work, and I will pay the wages;" in that caſe, ſince non-performance of work and non-payment of wages are not expreſſed, another penalty is proper, *in the event of a breach of promiſe on either part*.

" If thou ſhouldſt do *that*, I would do *this*;" ſuch a declaration is no promiſe: for the conditional future tenſe expreſſes ſomething dependent on an event, and implies *poſſible* non-performance.

CHAP.

CHAP. III.

ON

RESCISSION

OF

PURCHASE AND SALE.

SECT. I.—*On Rescission of Purchase.*

AFTER breach of engagement among ſocieties, Reſciſſion of Purchaſe and of Sale is propounded by MENU, to determine any breach of engagement between a buyer and ſeller: both theſe titles are diſcuſſed in this place.

I.

VRIHASPATI:—This rule of deciſion in regard to promiſes has been conciſely delivered: hear the conteſts uſually ariſing on purchaſe and ſale.

2. Two kinds of property are univerſally acknowledged, immoveable and moveable; when a contract of ſale is made, both are called by the name of vendible property.

Literally, at the time of the contract; that is, during the making of the ſale. Both moveable and immoveable effects are called by the name of vendible property *(paṅya)* or commodity.

II.

NÁREDA: — Property, in this world, is of two kinds, immoveable and moveable; and, in the laws of purchaſe and ſale, both are called vendible property.

Thus cows and the like, though bought for a price, are deſcribed in the chapter on Inheritance, and in other places, by the name of hereditable property; but in conteſts reſpecting purchaſe and ſale, by the name of vendible property: and, whenever the term of vendible commodity ſhall be uſed in this chapter, by that term muſt be underſtood the thing concerning the purchaſe of which a conteſt ſubſiſts. This is implied.

Therefore, in ſaying "let a buyer himſelf examine the commodity," it is not underſtood of an ox or the like hired to tranſport the goods purchaſed, though the cattle were in fact *once* bought.

III.

NÁREDA:—The rule of delivery and receipt is held by the wiſe to be ſix-fold; by tale, weight, meaſure, work, beauty, and ſplendor.

"By tale;" as ſauſelnuts and the like. The *Retnácara*.

And this is grounded on the uſage of buying and ſelling ſauſel nuts and other commodities by the tale. Under the term "and the like," are comprehended ſhells, *fagots of* ſmall wood, and ſimilar articles.

"By weight;" as gold and the like. "By meaſure;" as grain and other things. The *Retnácara*.

This alſo is grounded on the uſage of buying and ſelling grain and the like by meaſure, ſuch as the *páyya* and the reſt: in ſome inſtances grain is alſo *ſold* by the weight. Other lawyers remark, that cloth and ſimilar commodities are meaſured by the cubit or the like.

"By

" By work ;" oxen and other cattle are ſold by the work which they perform, in carrying burdens, and ſo forth.

The *Retnácara.*

An ox, which carries the weight of two thouſand *ſuvernas*, is valued at ſo much ; one able to carry a burden equal to four thouſand *ſuvernas*, is valued at ſo much : ſuch is the general uſage. Other lawyers *explain*, " *by work*," *by the load ; as much* cleft wood *as is* portable by one perſon, and ſo forth.

" By beauty ;" handſome women and the like ſold according to their perſonal charms. The *Retnácara.*

A handſome female *ſold* by beauty, according to the difference of complexion. Other lawyers explain it, ſtones and the like *ſold by their beauty.*

" By ſplendour ;" pearls, *gems*, and the like, ſold by their luſtre.

The *Retnácara.*

IV.

NÁREDA :—He who is diſſatisfied with his purchaſe, after buying a commodity for a *juſt* price, is called a reſcinder of purchaſe, *which is* a title of judicial procedure.

That man who is diſſatisfied is named the reſcinder of purchaſe, a title of law ; meaning him who reſcinds a purchaſe. But other lawyers hold, that the title of law is *ſomething* appertaining to that man : his diſſatisfaction is, in law, termed reſciſſion of purchaſe ; for his diſcontent is the cauſe of litigation.

The ſame legiſlator declares what ſhould be done in caſe of reſciſſion.

V.

NÁREDA :—If a man, having bought for a juſt price any *cloth or other conſumable* commodity *except ſeed-grain*, ſhould ſuſpect that he had made a bad purchaſe, he may return it on that very day to the ſeller, unleſs it be diminiſhed.

2. The buyer, who returns it on the ſecond day, ſhall give *the ſeller* a thirtieth part of the price; on the third day, twice as much, *or a fifteenth:* and, after that, it is abſolutely his own.

"A thirtieth part of the price;" the thirtieth part above the price: and this relates to cloth and other commodities liable to deſtruction by uſe, except ſeed grain. The *Retnâcara.*

Others ſay, that, if the buyer return it on the ſecond day, the ſeller ſhall receive the thirtieth part of the price.

"Twice as much:" twice a thirtieth; that is, a fifteenth, according to the opinion of other lawyers. After that *period*, the purchaſe muſt not be reſcinded.

In the *Mitâcſharâ, a reaſon for the exception* is mentioned; "becauſe a diſtinct period will be directed for returning ſeed-*grain* and the like." In the *Retnâcara* it is ſaid, "this relates to cloth and other commodities liable to deſtruction by uſe, except grain." In the *Chintâmeni it is obſerved;* "this *rule* is applicable to thoſe things for the examination of which three days are allowed." The following text declares the time allowed for the examination of grain and other commodities:

VI.

YÁJNYAWALCYA:—The time allowed for the trial and examination of ſeed-*grain* is ten days; of iron, one day; of *bulls and other* beaſts of burden, five days; of *pearls* and gems, ſeven days; of female ſlaves, one month; of milch cattle, three days; of male ſlaves, half a month.

"Seed;" grain to be ſown and the like. "Beaſts of burden;" bulls and other cattle. "Gems;" pearls and precious ſtones. "Women;" female ſlaves. "Milch cattle;" female buffaloes and the like. "Men;" male ſlaves. For the examination of theſe (namely of ſeed and the reſt) the time allowed is, in their order, ten days, *one day*, and ſo forth. The ſenſe expreſſed is, that,

that, if reſciſſion be propoſed, on the diſcovery of a defect when the ſeed or other grain is examined, the purchaſe may be canceled within ten days; but not later.

VII.

MENU:—A man who has bought or ſold any thing in this world, *that has a fixed price, and is not periſhable, as land or metals*, and wiſhes to reſcind the contract, may give or take back ſuch a thing within ten days *.

But this text of MENU relates to all things bought without examination, ſince there are texts repugnant to a reſciſſion of the contract on the tenth day, and ſo forth. The *Retnácara.*

The text of MENU concerns things not *very* liable to deſtruction by uſe, as a houſe, a field, a car, a chair, a bed and the like, excepting iron and other things, *for the trial of which a different period is allowed.*

VIII.

CÁTYÁYANA:—If a man, having bought vendible things, as milch cattle and the like, which have no blemiſh, repent of his bargain, and give them up within the limited time, *and before they are delivered to him*, he muſt pay a tenth part of the price to the owner.

2. But if a buyer have received the commodity ſold, and repent of his purchaſe, BHRIGU has ordained that he ſhall pay a ſixth part of the price when he returns it.

"If he have received the commodity;" if he have taken poſſeſſion of it. The *Retnácara.*

The inconſiſtent penalties of a ſixth and a tenth part are reconciled,

* See the commentary on this text quoted again at V. XXIII.

conciled, by MISRA and CHANDÉSWARA, from the circumſtance of the buyer's having, or not having, received the commodity. Thus, if the thing which he bought remained with the vender, he forfeits a tenth part of the price; if he carried it home, he forfeits a ſixth of the price.

Should it be ſaid, this is inconſiſtent with the forfeiture of a thirtieth part; the anſwer is, there is no inconſiſtency: for the penalty of a thirtieth part is eſtabliſhed in the caſe of things other than milch cattle and the like; and the forfeiture of a tenth part *is eſtabliſhed* in the caſe of milch cattle and the reſt.

CHANDÉSWARA remarks, that both theſe texts of CÁTYÁYANA relate to things bought without examination.

IX.

YÁJNYAWALCYA:—A return of commodities, once bought, ſhall not be made by a merchant who well knows the profit and loſs on vendible things: if he obſtinately perſiſt in returning them, he ſhall pay a ſixth part as a fine *to the king*.

A return of commodities, bought after examination, ſhall not be made by a purchaſer, who perceives not any advantage, after making the purchaſe, *from reſcinding his contract* as one made for a leſs quantity than what the price bore at the time of the purchaſe; nor ſhall the contract be reſcinded by a vender, who perceives no loſs on the commodity, in conſequence of the rate exceeding the market price. But the buyer and ſeller may reſcind the contract, if they perceive ſuch gain or loſs. The text is delivered for the ſake of this exception. The *Mitácſharà*.

In the *Retnácara* a ſimilar expoſition is given. Thus, after the purchaſe of a commodity examined, if the purchaſer think it bought for too high a price, he may return it, after aſcertaining the exceſſive price; but not without aſcertaining it. *Conſequently*, the purchaſe even of a commodity examined may be reſcinded.

In the *Calpateru* the text is read, *abhijánatà*, well acquainted with the profit and loſs on vendible things, inſtead of *avijánatà*, not

not perceiving profit or loſs on vendible things; and the ſame reading occurs in ſome places of the *Chintámeni*. According to that *reading*, if a thing be knowingly bought at a high price from the exigency of affairs, the contract cannot be afterwards reſcinded. But the *Retnácara* rejects that reading, becauſe it diſagrees with *copies of* YÁJNYAWALCYA, and with the *Pracáśa*, HELÁYUDHA, and the *Párijáta* *. In fact there can be no return of a commodity voluntarily purchaſed at a high price, in a cheap ſeaſon, by one who actually knew the price to be great.

Reſciſſion of contract and a penalty have been propounded in the caſe of a commodity bought without trial. In the caſe of commodities bought after examination, reſciſſion has alſo been allowed in conſequence of diſcovering the price to be exceſſive, and ſo forth. What is to be done in regard to the purchaſe of a thing examined, if no *increaſe or* diminution of price be diſcovered, is now ſtated.

X.

NÁREDA:—A trader, ſkilled in the value of vendible articles, ſhall not return thoſe which he has bought: it is his duty to know what may be the loſs on each article, and what the gain.

2. A buyer ought at firſt himſelf to inſpect the commodity, and aſcertain what is good and bad in it; and what, after ſuch inſpection, he has agreed to buy, he ſhall not return to the ſeller, *unleſs it had a concealed blemiſh.*

If he bought a thing for a great price, at a ſeaſon when the *general* rates were moderate; or a damaged article, for the price of undamaged goods; may he not juſtify the reſciſſion of the contract? Therefore the Sage ſays; "it is his duty to know what may be the loſs on each article, and what the gain." Conſequently, the price ſhould be verified, and the commodity examined, before the purchaſe be completed.

"And

* I have nevertheleſs retained the verſion of the text, as it is read by LACSHMÍD'HERA, author of the *Calpateru*. T.

"And what, after ſuch inſpection, he has agreed to buy;" what he has agreed to purchaſe, after trial and examination of its qualities and defects, deeming it ſuch as he deſired, and free from blemiſh, and ſo forth. Or the ſenſe may be; what he has agreed to buy, having approved it after diſcuſſing the price.

XI.

VRÍHASPATI:—Let a buyer himſelf examine the commodity, and ſhow it to others; when, after inſpection and approbation, he has accepted it, he ſhall not return it.

"And ſhow it to others;" to confirm the examination. But if he wiſh to return a thing ſo examined, and do not ſhow an exceſs in the price, which was unknown to him at the time of purchaſe, he ſhall pay a fine equal to a ſixth part, as directed by YÁJNYAWALCYA. Such is the ultimate ſenſe of the text.

XII.

VYÁSA:—Graſs, wood, bricks, thread, *common* grain, *not to be ſown*, wine, *or other* liquids, cloth, baſe or precious metals, ought to be inſpected immediately.

"Grain," except ſeed; for YÁJNYAWALCYA has declared, that the time allowed for examining ſeed-grain is ten days.

XIII.

NÁREDA:—Milch cattle ſhould be examined within three days; beaſts of burden, within five; but the examination of pearls, gems, and coral, muſt be within ſeven days;

2. Of male ſlaves, within half a month; of females, within one month; of *rice and* all *other* ſeeds, within ten days; of iron, and wearing apparel, within one day.

Since one day is allowed by NÁREDA for the inſpection of wearing apparel, the word "immediately," in the text of VYÁSA, ſhould be taken in the ſame ſenſe. CHANDÉSWARA.

It ſhould not be ſaid, that the term 'one day' may ſignify immediately *(ſadyah)*; becauſe one is neceſſarily denoted by this term, and *ſadyah* is explained by AMERA, at the inſtant. The word *ſadyah*, ("immediately,") ſometimes ſignifies on that day; but the term 'one day' does not always ſignify immediately. However *ſadyah* is formed by the ſuffix *dyah*, which conveys the ſenſe of day.

If it be ſaid, that, *in this text*, the direction for milch cattle to be examined within three days is ſuperfluous, becauſe it has the the ſame meaning with the former text of NÁREDA, directing the buyer to pay a fifteenth part on the third day; or after that, the commodity is abſolutely his own (V 2); ſome lawyers anſwer, "the former text lays down a ſpecial rule reſpecting things returnable in three days; but this text (XIII) allows three days for the examination of milch cattle;" and MISRA has remarked on the former text (V 2), that the rule is applicable to thoſe things for the examination of which three days are allowed.

Others, relying on the opinion of CHANDÉSWARA, hold, that the former text concerns cloth and other commodities liable to deſtruction by uſe, and regulates the particular conſequences according to the particular day *on which the commodity is returned*; but this text regulates the other *general* effect of any-how returning the thing within three days.

After declaring the time allowed for trial and examination, in the ſame order as delivered by NÁREDA, the following text is cited in the *Retnácara*:

XIV.

VRIHASPATI:—Within thoſe times, if a blemiſh be any-

any-where diſcovered in the commodity purchaſed, it muſt be returned to the ſeller, and the purchaſer ſhall take back the price.

In this text there is a various reading, *ſanjnyâyaté*, inſtead of *ſanjâyaté*, be known or diſcovered: in both readings the ſenſe is the ſame; for it is conſiſtent with the reaſon of the law, and with the text of CÁTYÁYANA.

XV.

CÁTYÁYANA: — But, an unexamined commodity being bought, and afterwards proved to have a blemiſh, it muſt be returned to its owner within the limited time, and not otherwiſe.

"The limited time;" the period allowed for trial and examination of it. "Not otherwiſe;" not after the time allowed for inſpection. The *Retnácara*.

Conſequently, the purchaſe may be cancelled if a blemiſh be diſcovered within the time limited for examination; but not if a thing bought, and placed in the buyer's houſe, be accidentally damaged within the time allowed for detecting blemiſhes.

Is not this repugnant to the text of MENU (Book II, Ch. II, v. LXI); for, by ſaying it ſhall never be ſold, the ſale is declared illegal; and that ſhows a thing to be returnable even after the time allowed for inſpection? If it were ſold with a concealed blemiſh, then it may be returned even after a very long time. So the *Chintâmeni*.

Conſequently, if it were ſold with a blemiſh known to both parties*, it may be returned within the time limited for inſpection; if it were fraudulently ſold with a concealed blemiſh, it may be returned at any time.

One commodity mixed with another of inferior value, as ſaffron adulterated with ſafflower, *ſhall never be ſold as unmixed*; nor a bad commodity, or one which has ſome blemiſh different from what

* So the MS. I ſuſpect an error; the author's meaning muſt ſurely be, ſold with a blemiſh unknown to both parties. T.

what is diſcloſed; nor leſs *than agreed on;* nor a thing kept at a diſtance, that its qualities and defects may not be known; nor a thing concealed, or covered with a cloth. The *Retnácara**.

But the author of the *Chintámeni*, after ſtating all this, adds, when any one of theſe *objections to the purchaſe* is diſcovered, the thing may be returned even after a very long time.

XVI.

NÁREDA:—But a mantle, that has been worn, and is tattered and ſoiled, yet is bought with thoſe known blemiſhes, cannot be returned to the ſeller.

The text ſhould be ſupplied; "yet is bought with thoſe *known* blemiſhes." From parity of reaſoning, it may extend alſo to other goods bought with ſuch blemiſhes. The *Retnácara.*

SECT. II.—*On Reſciſſion of Sale.*

XVII.

NÁREDA:—When a vendible thing, ſold for a *juſt* price, is not delivered to the purchaſer, this is called Non-delivery of a thing ſold, a title of judicial procedure.

That thing, which is not delivered, is called by this technical title. Or the relative is an epithet of the thing ſold; the non-delivery of that *vendible* thing which is ſold, but not delivered, is called a title of law. Or the terms may be uncompounded; *ſale and non-delivery.* The ſame is intended by MENU in the term "reſciſſion of ſale."

The following text declares the rule in this caſe:

XVIII.

* In a gloſs on the text of MENU above cited. (Book II, Chap. II, v. 61).

XVIII.

NÁREDA:—He then who, having ſold vendible property for a juſt price, delivers it not to the buyer, ſhall be compelled, if it be immoveable, to pay for any ſubſequent damage, *as the loſs of a crop and the like;* and if moveable, for the uſe and profits of it.

"Subſequent damage;" as loſs by treſpaſſes *of cattle* on the crop, and the like. "The uſe;" *literally*, the work, as the carriage of burdens and ſo forth. "Profits;" as milk and the like. The *Retnâcara.*

The *Chintâmeni* gives a ſimilar expoſition. It muſt be obſerved, that the produce of land or the like ought alſo to be given. Some hold, that *cſhaya*, ſignifying inhabited ground, implies the rent of a habitation, conformably with the ſenſe of the root *cſhi*, which ſignifies to inhabit, as well as to go. But others ſay, that *cſhaya* denotes the loſs of an expected crop, or the loſs of houſe-rent and ſo forth; and that this is meant in the gloſs of the *Chintâmeni*, by the term "loſs of a crop or the like."

XIX.

NÁREDA:—Should the value be diminiſhed *in the interval*, he ſhall deliver it together with the difference of the value: ſuch is the rule for merchants in the ſame place; but, among thoſe who trade to foreign countries, the foreign profit muſt be made good *to the purchaſer.*

If gems, or the like, ſold but not delivered by the vender, ſink in value; if their price be gradually diminiſhed; they ſhall be delivered to the purchaſer with the difference of the value. *But*, among thoſe who trade to foreign countries, (among thoſe who are accuſtomed to travel to other countries *for the purpoſes of commerce,*)

commerce,) the vender ſhall make good the profit which might have been obtained by going to a foreign country.

VÁCHESPATI MISRA.

The ſame expoſition is delivered in the *Retnácara*. But others hold, that the rule concerning immoveable and moveable effects is ſtated generally in the firſt text (XVIII); and a particular rule is delivered in the ſecond verſe (XIX); for it is expreſſed conditionally. Thus, ſhould the value of a thing, whether moveable or immoveable, be diminiſhed, the difference of the value muſt be made good, as well as the damage and ſo forth; as directed in the firſt text: and if any one of thoſe things were fit for foreign trade, the foreign profit muſt be made good, as mentioned by MISRA; not the charge of tranſport and the like in the ſame country. It ſhould not be objected, that almoſt all cattle and merchandiſe are fit for foreign trade. It is implied, that the purchaſer bought the thing for that purpoſe, *or that* the cattle or goods were actually employed in foreign trade.

XX.

NÁREDA:—This rule has been declared for vendible commodities, of which the price has been paid *or tendered;* but where it has not been paid *or tendered,* there is no injury to the buyer by *delaying the delivery,* unleſs there have been a ſpecial agreement *as to the times of delivery and payment.*

If the ſeller had received the whole price, he muſt pay for the damage and ſo forth; but there is no offence in his keeping the commodity to obtain payment. MISRA.

Conſequently, it is an offence to detain it knaviſhly, without a ſufficient cauſe.

XXI.

YÁJNYAWALCYA:—He who, having received the price of a thing ſold, delivers not that thing to the

the buyer, ſhall be compelled to deliver it, together with intereſt; or, among thoſe who trade to foreign countries, with the foreign profit.

"Intereſt" muſt be underſtood to be an increaſe on account of the difference of price. But, in a gloſs on the text of NÁREDA, an opinion is advanced in the *Mitâcſharâ*, that the profit which would have ariſen from the ſale of the commodity muſt be made good, or twice or thrice the rent of a houſe or the like, or the rate *of intereſt* directed under the title of Loans; at the option of the buyer.

XXII.

VISHNU:—He who, having received the price of a thing ſold, delivers not that thing to the buyer, ſhall be *made to pay him the value of it, with damages, and* be fined a hundred *panàs* of copper *to the king**.

* This text alſo has the ſame import with that of NÁREDA; but further directs an amercement.

XXIII.

MENU:—A man who has bought or ſold any thing in this world, *that has a fixed price, and is not periſhable, as land or metals*, and wiſhes to reſcind the contract, may give or take back ſuch a thing within ten days†;

2. But, after ten days, he ſhall neither give nor take it back: the giver, or the taker, *except by conſent*, ſhall be fined by the king ſix hundred *panas*.

He

* I inſert the whole text, as it is cited in other works; a part of it ſeems to have been here omitted by miſtake. T.

† The firſt verſe has been already cited (VII).

He who wiſhes to reſcind the contract, (who wiſhes it annulled, who repents of it,) may give back *the price, or the commodity*, to the other; *that is*, may return it. The buyer may give it back to the ſeller; or the ſeller may take it back from the buyer. This regards grain to be ſown, and things which are not periſhable, as a houſe, land, a car and the like, excepting iron, beaſts of burden and the reſt. The *Retnácara.*

For the time allowed for the trial and examination of iron and the reſt, is limited by particular texts (VI, &c.); and in ſome inſtances it is limited to three days. A period of ten days is allowed for reſcinding the purchaſe of a houſe or of land; from *the* parity *of the caſe*, the ſame ſhould be allowed for the reſciſſion of ſale: and it is equitable that the period ſhould be limited to three days for the reſciſſion of ſale in the caſe of iron or the like, as directed *for the reſciſſion of purchaſe* (VI).

He who has bought or ſold any article in this world, that has a fixed price, and is not periſhable, as land, or copper, or the like, and repents of the contract, thinking it ill made, may return the goods within ten days, or may take back the thing ſold.

CULLÚCABHATTA.

This text may relate to things purchaſed without examination; for it ſeems to be ſo eſtabliſhed in the ſection on Reſciſſion of Purchaſe: it may alſo be underſtood of a ſale made by miſtake.

But other lawyers maintain, that this text, and what is ſuggeſted by the text of YÁJNYAWALCYA (VII), may alſo relate to a thing bought after examination. It is the buyer's own fault if he examine not the commodity. But *the rule that under certain circumſtances* a thing cannot be returned to the ſeller, takes effect after ten days and ſo forth. Yet, even in that caſe, it ſhould have been inſpected and approved (XI), to obviate *the riſk of* concealed blemiſhes. However, under the rule regarding commodities inſpected and approved (XI), if an agreement be formally made to this effect, "this is approved by me; even though blemiſhed, it ſhall not be returned;" ſuch a commodity can on no account be returned. This is intended; and the text of MENU (XXIII) ſuppoſes ſuch an agreement.

"Six hundred" (XXIII 2); ſix hundred *panas*.

CULLÚCABHATTA and CHANDÉSWARA.

"The giver or the taker;" the buyer giving it back, or the

ſeller taking it back. According to the *Retnácara* and the reſt, this text ſhould properly be reſtricted to things bought without examination.

XXIV.

MENU :—By this law, in all buſineſs whatever here below, muſt the judge confine within the path of rectitude a perſon inclined to reſcind his contract of ſale and purchaſe.

"All buſineſs whatever:" by this expreſſion, the law concerning reſciſſion of purchaſe and ſale is extended to other worldly affairs. Conſequently, there is no offence in reſcinding, within ten days, a contract for a loan, for an aſſociation, or for ſervice, or a promiſe of wages, or the like. But, after that period, thoſe promiſes may not be broken; *or if they be retracted*, a fine of ſix hundred *panas* muſt be paid to the king. This is conſiſtent with the opinions of CHANDÉSWARA and CULLÚCABHATTA; but a fine may be inferred without a particular rule.

"By this law" (XXIV); by the law declared under the head of Reſciſſion of Sale.

XXV.

CÁTYÁYANA :—He who accepts not a thing which he has bought and ſecured, and he who delivers not, free from blemiſh, *a thing which he has ſold*, ſhall *each* take back his own property, forfeiting a tenth part of the price.

"Secured;" *literally*, received; brought into his power. The *Retnácara* and *Chintámeni*.

"Each ſhall take back his own property;" the buyer ſhall take back the price; and the ſeller ſhall take back the commodity: for, under the authority of the text, the right of property has not been transferred in this caſe. But the Sage propounds a diſtinction in regard to a thing of which poſſeſſion has not been taken.

XXVI.

XXVI.

CÁTYÁYANA:—Yet, if the thing were not ſecured, though a formal contract were made, and the purchaſer accept it not, the ſame rule *for reciſſion within ten days* prevails; but, after ten days, the contract may not be reſcinded.

"A formal contract;" an atteſted writing or the like. Although ſuch a contract be made, if poſſeſſion of the commodity have not been ſecured, the purchaſer does not forfeit a tenth part *of the price*, on returning it within ten days; but, after that period, a thing, of which the blemiſh was known, cannot be returned. The *Chintâmeni*.

The meaning is, that if a mere agreement for purchaſe were made, and the goods be not accepted, there is no penalty of a tenth part *of the price;* but, after the limited time, nothing can be returned, even though a mere agreement had been made. As for returning a blemiſhed commodity, even after the limited time, that is reſtricted to the caſe of a concealed blemiſh; it is not permitted if the blemiſh were diſcloſed at the time of the ſale.

XXVII.

NÁREDA:—Should the thing ſold be injured, or burned, or carried away, *after the time when it ought to have been delivered*, the loſs ſhall fall on the vender, who delivered it not when he ought.

"Who delivered it not when he ought;" who, without reſcinding the contract, tendered it not, even though a demand were not *formally* made: *in this caſe the loſs falls on the vender*, unleſs the commodity be injured by the act of GOD or of the king. But, after a demand, the loſs falls on the vender, even though the injury happen by the act of GOD or of the king; and he muſt make it good to the purchaſer. (XXVIII.)

XXVIII.

YÁJNYAWALCYA: — Should a commodity ſold, but not delivered on demand *with tender of payment*, be injured by the act of GOD or of the king, the loſs ſhall fall on the vender.

Again: if the vender, without reſcinding the contract, deliver not the commodity, though demanded by the purchaſer, and it be injured by the act of GOD or of the king, that loſs falls on the vender; therefore another unblemiſhed commodity, ſimilar to that which has been damaged, muſt be delivered to the buyer.

The *Mitácſharâ*.

It appears from the mention of a demand, in the text of YÁJNYAWALCYA, that the vender ſhall not be compelled to make it good, if a thing undemanded be injured by the act of GOD or of the king. As a demand is not ſpecified in the text of NÁREDA (XXVII), it ſhould ſeem, that the vender muſt make good *the value of* the thing, though *it had not been* demanded, if it be injured by his own negligence, without the act of GOD or of the king; but the vender ſhall not be compelled to make it good, if deſtroyed by the effect of time, before it be demanded.

Yet, if a buyer, repenting of his purchaſe, accept not the thing, and it be afterwards deſtroyed by the act of GOD or of the king, the loſs falls on him.

XXIX.

YÁJNYAWALCYA:—If the firſt vendee refuſe to receive the thing ſold, it may be ſold to another; and if a loſs ariſe by the fault of the vendee, on him alone ſhall it fall.

Should the firſt buyer, repenting of his purchaſe, refuſe to receive the commodity, it may be ſold to any other purchaſer who may offer. The firſt hemiſtich is thus expounded in the *Mitácſharâ*.

Here no reference to the time limited for reſciſſion of purchaſe is hinted by the Sage or Commentator: and according to the *Mitácſharâ*,

Mitácſharā, the laſt hemiſtich eſtabliſhes that the loſs falls on the vendee, if no other purchaſer offer for that thing, and it be deſtroyed by the act of GOD or of the king; for the loſs happens through the fault of the purchaſer in refuſing to receive the commodity.

XXX.

NÁREDA: — He who, having ſhown *a ſpecimen of* property free from blemiſh, delivers blemiſhed property, ſhall be made to pay double the price *to the vendee*, and a fine to the ſame amount.

By directing that double the price ſhall be paid, if blemiſhed property ſhall be ſold, after ſhowing unblemiſhed goods to determine the price, the neceſſity of delivering the blemiſhed property is denied. But the Sage has not declared that the unblemiſhed thing which was ſhown ſhall be delivered.

XXXI.

VRIHASPATI:—The diſhoneſt man, who ſells a commodity knowing its blemiſh, *but not diſcloſing it*, ſhall pay double the price of it *to the vendee*, and a fine of equal amount *to the king*.

"The price of it;" the word "it" bearing an apparent alluſion to what has preceded, and "ſells" ſignifying 'gives after receiving a price,' the alluſion is to the price propoſed; for NÁREDA has ſtated it in a ſingle phraſe: and the word price, in his text (XXX), ſignifies the ſtipulated *conſideration*, and cannot be applied in a ſecondary ſenſe to *the value of* the commodity *delivered*. Or it may be thus explained: ſince the text of NÁREDA directs payment of double the price, if blemiſhed property be ſold after ſhowing unblemiſhed goods; twice the value of the commodity muſt be paid, if blemiſhed property be ſhown and delivered without diſcloſing the blemiſh; for in the text of VRÍHASPATI the word "it," being referred to the principal ſubject,

alludes to the commodity which was originally propoſed for ſale.

"Who ſells a commodity (XXXI);" who ſells it without diſcloſing the blemiſh. The *Retnácara.*

XXXII.

YÁJNYAWALCYA:—If a man ſell to one, what had been *already* ſold *by him* to another, or a blemiſhed commodity as unblemiſhed, the fine ſhall be double the price of the thing.

Again; he who ſells to one a thing already ſold to another, or vends a blemiſhed commodity, of which he conceals the blemiſh, ſhall be fined in double the price of that commodity. This is implied by the interpretation firſt ſtated in the expoſition of the firſt hemiſtich, as delivered in the *Mitácſharà.*

XXXIII.

NÁREDA:—He who ſells a commodity to one man, and delivers it to another *unauthorized to receive it*, ſhall alſo pay double the price, and a fine to the ſame amount.

After agreeing for the price of that thing with one man, if a man afterwards relinquiſh it to another, he alſo ſhall be compelled to pay double the value, and a fine to the ſame amount. The *Retnácara.*

In this caſe, the firſt contract ſhall prevail (Book II, Chap. ii. V. 28). To whom ſhall twice the value be paid? To him who does not obtain the chattel purchaſed. This ſhould be underſtood as the ſenſe of the text, becauſe no perſon is ſpecified.

Here a difference occurs in the *Retnácara* and *Mitácſharà*, one ſtating the penalty at double the value of the thing, the other at double its price. It may be reconciled by ſuppoſing the price and the value of the thing to be the ſame.

XXXIV.

XXXIV.

NÁREDA: — But if a vendee refuſe to accept the commodity which he has bought, when it is offered, the vender commits no offence if he ſell it to another.

XXXV.

YÁJNYAWALCYA, cited in the *Retnácara* and *Chintámeni*:—He ſhall be compelled to repay two-fold a ſum received as earneſt.

What is voluntarily delivered to the ſeller, by the purchaſer, for the purpoſe of ratifying the bargain, is meant by the word "earneſt;" and the vender muſt pay twice the amount if he afterwards cancel the ſale. The *Retnácara*.

Here it is not directed that twice the value of the thing ſhall be recovered, but twice the amount depoſited to complete the bargain. This is the full purport of the text.

XXXVI.

VYÁSA: — By him who has given earneſt, and appointed no ſpecifick time for delivery, it ſhall be forfeited if he refuſe to accept the commodity when offered.

The amount which the vendee has given as earneſt on account of the purchaſe, is forfeited to the vender, if the buyer refuſe to receive the commodity when tendered. Therefore that amount ſhall not be recovered by the purchaſer from the vender. The *Retnácara*.

In this caſe, it appears that forfeiture of the amount paid as earneſt is the only penalty *impoſed* on the vendee. But the text of YÁJNYAWALCYA (XXXV) being thus expounded in the *Chintámeni*, "what is given by the vendee, and received by the

vender promiſing to ſell his own vendible property, is received as earneſt, and twice its amount ſhall be paid to the purchaſer by the vender repenting of the ſale;" what is depoſited to complete the bargain, is denoted by the word earneſt.

This text (XXXV) is placed by YÁJNYAWALCYA himſelf under the title of Loans and Payment, and is expounded by VIJNYÁNÉSWARA as relating to pledges*.

XXXVII.

VRÍHASPATI:—What has been ſold, at a low price, by a man inebriated or inſane, or through fear, or by one not his own maſter, or by an idiot, ſhall be given back, or may be taken *forcibly* from the buyer.

"Shall be given back *by the purchaſer of it;*" the text ſhould be thus ſupplied. "At a low price;" this is connected with all the terms of the ſentence: thus the meaning is, "what has been ſold, at a low price, by a man inebriated or the like." Conſequently, *if it be* ſold for a fair price by a man inebriated, *the ſale* is valid; and *if it be* ſold at a low price by a man ſound of mind, *the ſale* is *alſo* valid. Thus ſome explain the law: but that inference is wrong; for, even the ſale of a thing which ought not to be ſold might be valid, *though made* by a man intoxicated. Therefore the full ſenſe is, that a ſale made by miſtake, for a low price, is void: and in this caſe, as ſixteen void gifts are declared under the title of Subtraction of what has been given, ſo, from parity of reaſoning, there may be ſixteen void ſales. Thus others expound the law.

XXXVIII.

NÁREDA:—The purchaſe and ſale of all commodities by merchants are made with a view to gain; and that gain ariſes from the receipt of the price, be it great or ſmall:

2. There-

* Book I, v. CXXIV.

2. Therefore, *when a price has not been ſtipulated*, let ſome merchant, who knows the price of commodities, fix it according to place and time: let him not act crookedly; the ſtraight path is the beſt in all mercantile buſineſs.

If a thing be ſold without ſtipulating its price, let a merchant determine it according to time and place, and fix a proper value: let him not act crookedly, or fraudulently; let him not deviate from propriety in regard to the price. CHANDÉSWARA.

XXXIX.

YÁJNYAWALCYA: — He who falſifies ſcales, market rates, meaſures, or ſtandard coins, and he who uſes them, ſhall both be forced to pay the higheſt amercement.

"Scales," or balance; the ſcales and beam. "Market rates," (literally, commands;) the king's written precept *regulating market rates*. "Meaſures;" as a *praſt'ha*, a *dróńa*, and the like. "Coins;" money ſtamped; as a *bherma*, a *niſhca*, or the like. Both he who falſifies theſe, (who makes them different from the general ſtandard of the country, whether leſs or more, or ſtamps money, ſuch as a *bherma* and the like, in an unuſual manner, or alloys it with copper or other *baſe metal*,) and he who uſes them knowing them to be falſe, ſhall each be fined in the higheſt amercement. VIJNYÁNÉSWARA.

The Sage propounds a law concerning the trial and examination of coins.

XL.

YÁJNYAWALCYA: — That examiner of coins who declares bad money good, or good money bad, ſhall be compelled to pay the higheſt amercement.

He

He again who, on examining coins, declares a coin to be good, which is *over*-alloyed with copper or the like, or who declares a true coin to be falſe, ſhall be fined in the higheſt amercement.

The *Mitácſharà*.

A ſimilar fine might be impoſed on thoſe who declare true weights or meaſures to be falſe; but it is not directed in this caſe, becauſe their offence is leſs than that of an examiner of coins, by reaſon of the groſſneſs of weights and meaſures compared with coins.

XLI.

YÁJNYAWALCYA:—But he who cheats in weights or meaſures to the amount of an eighth part, ſhall be forced to pay a fine of two hundred *pan'as*; and proportionably if *the fraud be* greater or leſs.

He again who defrauds *another* by falſe weight or meaſure, to the amount of an eighth part of the vendible property, whether it be grain in the huſk, cotton, or the like, ſhall be fined in two hundred *pan'as*; and if the amount of the fraud be more or leſs, the fine alſo ſhall be proportionably more or leſs.

The *Mitácſharà*.

In this caſe, if the fraud be leſs than an eighth part, the amercement ſhall be leſs; if the fraud be greater, the amercement ſhall be higher. Thus ſome expound the law.

XLII.

YÁJNYAWALCYA:—A man who adulterates vendible property, ſuch as drugs, oil, ſalt, perfumes, grain, ſugar, or the like, ſhall be compelled to pay ſixteen *pan'as*.

"Drugs;" medicinal ſubſtances. "Oil;" *comprehending* clarified butter and the like. "Perfumes;" as *uśira*, or the root of *vírana* graſs*, and the like. The expreſſion, "or the like," comprehends

* Aromatick Andropogon.

comprehends aſafœtida, pepper, and other things. The fine for mingling inferior ſubſtances with theſe, for the purpoſe of ſale, is ſixteen *panas*.

XLIII.

YÁJNYAWALCYA:—The fine for diſguiſing the nature of earth, leather, beads, thread, iron, wood, bark, and cloth, is eight times the amount of the ſale.

Giving to earth and the reſt, for the purpoſe of ſale, the *appearance of* a *thing of a* precious nature, which it *really* is not; or making it to reſemble a thing of a valuable nature, by the addition of a different odour, colour, or juice. For inſtance, counterfeiting fragrant *ámalacá* * by adding the odour of the flower *mellicá* † to a piece of earth; or the ſkin of a tiger, by colouring the ſkin of a cat; or a ruby, by tinging a glaſs bead with another hue; or ſilken thread, by giving a gloſſy appearance to cotton thread; or ſilver, by poliſhing black iron; or ſanders wood, by adding the odour of that to the wood of the *bilwa* ‡; or paſſing the bark of the *caccóla* for cloves; or counterfeiting wove ſilk, by raiſing a gloſſy appearance on cotton cloth: *in ſuch caſes*, the fine is eight times the value of the commodity, whether earth, leather, or the like, made to reſemble *another thing*, and ſold *in its ſtead*. The *Mitácſharà*.

Others hold, that the fine is eight times the value of the fragrant *amalaca*, which it was called when ſold, and which was expected by the purchaſer.

XLIV.

YÁJNYAWALCYA:—The fine alſo for one who delivers, in pledge or ſale, a thing changed under ſeal, or a fictitious valuable, is thus regulated:

2. For a thing worth leſs than a *paná*, *the fine is* fifty *panás*, for one *paná*, a hundred; for two *panás*,

* Phyllanthus emblica. † Nyctanthes undulata. ‡ Cratœva marmelos.

paṅ'as, two hundred; for a greater value, a higher amercement.

"Under ſeal;" what has the cover of a ſeal *or the like, as* a caſket. "A thing changed;" of him who fraudulently ſubſtitutes, by ſlight of hand, a caſket full of beads, for another caſket which he ſhowed full of pearls, and of him who delivers, in ſale or pawn, a fictitious valuable, as *counterfeited* muſk or the like, "the fine is thus regulated:" *or it* will be *now* delivered; *or it* ſhould be *thus* underſtood. If the price of the fictitious muſk, or the like, be leſs than one *paṅ'a*, the penalty for ſelling that fictitious article is fifty *paṅ'as;* if the price be one *paṅ'a*, a hundred *paṅ'as;* if the price be two *paṅ'as*, two hundred *paṅ'as:* in like manner, if the price be greater, a higher fine ſhould be inferred. VIJNYÁNÉSWARA.

Others deem it proper to determine the fine, in a caſe of *fraudulent* ſale, according to the number of *paṅ'as* in the price received; and, in the caſe of a *fraudulent* pledge, according to the number of *paṅ'as* in the value of the commodity under the name of which the thing was delivered. Hence, although the fine be very heavy, it muſt be borne, becauſe it is directed by the text.

XLV.

YÁJNYAWALCYA:—The higheſt amercement is *directed* for *traders* combining to maintain the price againſt labourers and artiſans, *although* acquainted with the riſe or fall of the price.

If traders, knowing an increaſe or decreaſe in the market rates as regulated by the king, conſpire, through avarice, to maintain the *former* price againſt labourers, as waſhermen or the like; and againſt artiſans, as painters and the reſt; they ſhall be fined one thouſand *paṅ'as*. The *Mitácſharà*.

Others hold, that if labourers, artiſans, and traders, knowing the riſe or fall of the market rates, maintain the price, (that is, keep up the former rates,) they ſhall be fined.

XLVI.

XLVI.

YÁJNYAWALCYA: — The fine on traders who combine to obtain or to vend goods at wrong prices, is fixed at the higheſt amercement.

For thoſe merchants again, who combine and ſtop foreign commodities, which they want at a wrong price, below the market rate, or who ſell goods at prices exceeding the market rate, the fine ordained by MENU and others is the higheſt amercement.

The *Mitácſharâ*.

* The meaning which reſults therefrom is, that a fine is directed for the offence of raiſing or leſſening the market rates fixed by the king. The Sage declares, that purchaſe and ſale ſhould be conducted according to the prices regulated by the ſovereign.

XLVII.

YÁJNYAWALCYA;—Purchaſe or ſale ſhould be daily conducted according to the *market* prices, which are fixed by kings; the difference thereof is the legal profit of traders.

If the king be near, according to that price which is fixed or regulated by him, ſhould daily purchaſe or ſale be conducted. The difference, or remainder, of thoſe prices regulated by the king, is the only profit of traders; for they may not alter the rates at their own choice. The *Mitácſharâ*.

"If the king be near;" but if he be not near, the market prices ſhould be regulated by his officers, and ſhould be reported to him; elſe there may be apprehenſion of wicked practices. On this account, the word king is uſed in the plural; it has here a ſecondary ſenſe, as in the expreſſion "the king moves," *meaning him and his retinue.*

Diſtinct prices ſhould be fixed for purchaſe and ſale, according to the abundance or paucity of purchaſers.

XLVIII.

XLVIII.

MENU:—Once in five nights, or at the close of every half month, or of every month, *according to the nature of the commodities*, let the king make a regulation for market prices, in the presence of those *experienced men*.

Once in five nights, or at the close of every fortnight, or of every month, according to the variableness, even tenor, or great uniformity of the price. In like manner, other occasions *for frequent or rare changes* may be also understood. The term "king" is here used generally; intending also the king's officers.

XLIX.

YÁJNYAWALCYA declares the mode of regulating market prices:—On commodities of the same country, a trader, who buys and sells again immediately, may receive five in the hundred; but on those of other countries, ten in the hundred.

He who sells a commodity, which he obtained in the same country, may take a profit of five in the hundred, (that is, five *pan as* in one hundred *pan as*;) and if the commodity were obtained in another country, he may take a profit of ten *pan as* on the value of one hundred *pan as*, *that is*, if an opportunity of sale occur on the same day on which the commodity was received. But to him again who sells the commodity at a subsequent time, a greater profit must be allowed, because a greater time elapses. The market prices of various commodities should be so regulated by the king, in his own dominions, that there may be a profit of five *pan as* in a hundred on the regulated prices.

The *Mitácsharâ*.

In this instance, another or a foreign country should not be assumed, from the description *quoted in a former chapter*; "where

language differs, or a mountain intervenes, &c.* ;" for that is barred by the condition mentioned, "who buys and sells immediately." But a greater profit may be determined from a man's own judgment, at the distance of a *Yójana* or the like from the market where the purchase was made, according to the difference of charges. Such is the meaning *of the text*.

What price may be taken by him who buys from a man to sell again, is determined after regulating the market prices for the purchase of commodities bought *for consumption*.

L.

YÁJNYAWALCYA :—Adding the incidental charges to *the first cost of* the commodity, let a price be fixed which shall be equitable both to the buyer and the seller.

So much as is the amount of charges incident to the fabrication or purchase of the commodity ; adding that, and the king's taxes, and the charges of subsistence, of boat hire and the like, let a price be fixed : and in that case, if the seller happen to pay all the *estimated* charges, the buyer could obtain no *subsequent* profit ; or if the buyer kept all the *computed* profit, the seller ought not to be liable for any *previous* charges : therefore the price should not be so regulated ; but equitably both for the buyer and seller, to obviate excessive loss. Such is the sense ; and VIJNYÁNÍSWARA so expounds this text ; but it is cited by him with a remark, that "the Sage declares the mode of regulating the price of a foreign commodity." Yet in fact it is only an example of the mode of regulating market prices ; the regulation should be formed on a man's own judgment. Sometimes, from the price happening to rise, the profit is five hundred *pan'as* on a hundred ; sometimes a man may even lose his capital : for the ruler *of events* governs the *fluctuations of* price. Consequently, the market rates should be fixed according to the prices of several countries, according to time, to *charges of safe* custody and the like.

LI.

* Book II, Chap. III, v. XXVI.

LI.

NÁREDA :—The value of apparel once waſhed is diminiſhed an eighth part; twice *waſhed*, a fourth; thrice *waſhed*, a third; and four times waſhed, a half:

2. Afterwards a deduction of a quarter from the half-reduced value is ſucceſſively made, until the fringe be waſted, and the cloth tattered; *but* for tattered cloth there is no regulated deduction.

Here it ſhould be obſerved that barter is in fact a ſale; and the ſame rules ſhould be admitted in the forms of judicial procedure *for barter* and for ſale, elſe the rules concerning it are nowhere delivered. But there is ſome diſtinction in law: delivery, after receiving a conſideration any-how ſettled by way of price, *is ſale*; delivery, after receiving a conſideration ſettled by way of equivalent, is barter. The equivalent ſhould be of the ſame nature, and both things to be bartered ſhould be equal in quantity; or, if one be double of the other, or the like, they ſhould be equal in pecuniary value: or more or leſs *under other circumſtances*, at the option of the parties. Thus, in an exchange of *tila* or ſimilar grain, for peas or pulſe, the equal value, not the ſimilar nature, is required: namely, ſuch value as would ariſe from the ſale of the article; for inſtance, from exchanging *tila* or other grain, for ſhells, *panas* of copper, ſilver coins, or the like. More may be determined by the mere exertion of a man's own intellect. *The law has been* thus concisely *propounded.*

CHAP.

CHAP. IV.

ON THE

OWNERS OF CATTLE

AND THEIR HERDSMEN.

SECT. I.—*On the Wages of Herdſmen, and on Losses of Cattle.*

HAVING propounded certain engagements ſuggeſted by the obligations of maſter and ſervant, MENU declares the law concerning diſputes *ariſing from the fault* of a particular ſervant, *namely*, the herdſman.

I.

MENU:—I now will decide exactly, according to the principles of law, the conteſts uſually ariſing from the fault of ſuch as own herds of cattle, and of ſuch as are hired to keep them.

"Cattle," which become the ſubject of diſpute.

The *Retnácara*.

Others explain the text; "I will decide exactly the conteſts between owners of cattle and *their* herdſmen."

To determine ſuits concerning wages, the Sage declares the rule for them:

II.

MENU:—That hired ſervant, whoſe wages are paid

with milk, may, with the aſſent of the owner, milk the beſt cow out of ten: ſuch are the wages of hired herdſmen.

"Whoſe wages are paid in milk;" hired for a recompenſe ſo paid; one whoſe wages are milk alone. He ſhall milk whichever is the beſt among ten cows. This milking of one cow *in ten* conſtitutes the wages of a herdſman hired for *an allowance of* food, clothes, and the like. The *Retnâcara.*

In the *Chintâmeni* a ſimilar expoſition is given; and it is added, in the *Menwarthamuctâvali*, that the herdſman muſt keep ten cows, for the milk of one, which is allowed him; and he muſt alſo milk them. But others explain "hired" (in the latter part of the text) a ſervant: it follows, therefore, that an attendant on cattle alſo is a ſervant; and the text coincides with that of VRĬHASPATI (Chap. I).

III.

NÁREDA:—For a hundred head of cattle, the annual wages of the herdſman are a heifer three years old; for two hundred, a milch cow, and the milk of the whole herd every eighth day.

"For a hundred head of cattle," *kept by him;* and ſo for two hundred. *The term employed in the text ſignifies* a heifer three years old. "The milk of the whole herd;" the milking of all the milch cows. The *Retnâcara.*

IV.

VRĬHASPATI:—*A ſervant,* hired for *attendance on* the milch cattle of another, ſhall receive the whole milk every eighth day.

Here is an optional alternative; the milk of one cow out of ten, or the milk of all the cows every eighth day, *allowed* as wages. But NÁREDA has further mentioned a heifer three years old. Neither is this a third caſe; for it cannot alone ſuffice for wages.

Nor

Nor ſhould it be affirmed, that the milk of the whole herd every eighth day, the milk of one cow out of ten every day, and a heifer *year by year*, form the very ſame caſe; for there is no mutual reference between the *texts of theſe* ſages. The milk of one beſt cow in ten, is equal to the milk of all the cows good and bad, at the end of every eighth day, or on every ninth day. In the caſe propounded by NÁREDA, ſince ſome of the hundred cows afford no milk, a heifer three years old is allowed as wages for attending ſuch cattle. Thus others *explain the law*. From the ſpecial mention of one whoſe wages are paid with milk, another form is to be underſtood for the wages of one who is paid in money; and that is propounded in the chapter on the Non-payment of Wages and Hire.

NÁREDA declares what ſhould be done by a herdſman:

V.

NÁREDA:—Let the owner each day commit his cattle to the charge of the herdſman, as ſoon as night ends; and in the evening, let the herdſman reſtore them *to their owner*, having ſeen them well ſatisfied with graſs and with water.

"Commit his cattle" to be kept *by the herdſman*. "Reſtore them after having ſeen them well ſatisfied with graſs and with water;" reſtore them after they have eaten graſs and drunk water. "In the evening," let the herdſman reſtore them; let him deliver them to their owner, when little of the day remains.

The *Retnácara*.

The *Chintámeni* furniſhes the ſame explanation. The meaning is, that the cows are intruſted to the herdſman for paſture and water only.

VI.

YÁJNYAWALCYA:—Let the herdſman reſtore the cattle each evening in the ſame condition in which he received them: for ſuch as have been ſeized or

killed through his negligence, he ſhall pay, if he had made an agreement for wages.

" Through his negligence :" *if* cattle *be* ſeized or killed, through his own fault, the herdſman ſhall be compelled to make good *the loſs* to the owner, if he had made an agreement for wages; that is, if wages had been ſtipulated. So the *Mitácſharà :* and the very ſame *expoſition is delivered* in the *Retnácara.*

By this condition (" if he had made an agreement for wages ") it is intimated, that he who attends cattle without wages ſhall not be compelled to make good the loſs; but to him who attends cattle as a favour, even the favour *conferred by him* is his hire : and he who, even without wages, makes a promiſe in this form, " I muſt inevitably reſtore the cattle," ſhall alſo be compelled to make good the loſs. Such ſhould be the deciſion.

VII.

MENU and NÁREDA :—But he ſhall not be compelled to make it good when robbers have carried it away notwithſtanding his exertions, provided he give notice to his maſter in a *proper* place and ſeaſon.

" In place and ſeaſon " proper for ſuch notice.

The *Retnácara* and *Chintámeni.*

In fact the ſenſe is this; not neglecting the proper place and ſeaſon, if he give immediate notice to his maſter. CULLÚCABHATTA *gives* the very ſame *expoſition.*

VIII.

VYÁSA :—The herdſman is not chargeable, if he be made captive, if the village be overpowered, or if the diſtrict be thrown into confuſion, and any of the cattle be ſeized or deſtroyed.

" If

"If he be made captive;" if he be ſeized and detained, and ſo forth. The *Retnácara*.

In fact, if the loſs or injury happen through want of care on the part of the appointed herdſman, though he were able *to defend the cattle*, blame is imputable to him; but not, if he were unable *to defend the herd*.

IX.

MENU:—By day the blame falls on the herdſman, by night on the owner *if the cattle be fed and kept* in his own houſe; but if the place of their food and cuſtody be different, the keeper incurs the blame*.

By day, if any fault occur in regard to the food and cuſtody of cattle placed in the hands of the herdſman, the blame falls on him; by night, if that happen to cattle reſtored by the herdſman and ſtanding in the owner's houſe, it is the owner's fault; but otherwiſe, (if they remain even at night in the herdſman's charge,) ſhould any fault occur, the herdſman incurs cenſure. So CULLÚCABHATTA. In the *Retnácara* the ſame *expoſition is given*.

Greater wages ſhould be ſtipulated for the herdſman, when the agreement is for attendance by day and night. The expreſſion "the blame falls on the owner," is intended to denote that the herdſman ſhall not be compelled to make good the loſs; *that* the fine *muſt be paid by the owner*, if grain be damaged and the like; and *that he muſt perform* penance, if the cattle die, and ſo forth.

VRÍHASPATI declares the mode in which a herdſman ſhould defend *cattle*:

X.

VRÍHASPATI:—Let the herdſman preſerve the cattle

 from

* In Book I, an anonymous text is quoted which differs from this in the laſt hemiſtich; "but if another have the care of them at night alſo, the owner ſhares no blame."

from danger of insects and reptiles, of robbers and tigers, and from falling into caverns or pits; let him defend them to the utmost of his power; let him call aloud for help, or give notice to his master.

Let him guard them from caverns or dens, and from pits or cavities. Let him preserve them, to the utmost of his power, from danger of insects or reptiles and the like. "Let him call aloud for help;" that is, let him make others hear *his cries*.

The *Retnácara*.

"Let him defend them;" let him rescue them. If the cattle be in imminent danger from a tiger or the like, let him call people to assist in protecting them; or if that be impossible, let him instantly give notice to his master, that he may endeavour to save them. Thus others interpret the text.

XI.

NÁREDA:—If a cow be in danger, let the herdsman defend her to the utmost of his power; but if he be unable to *protect her*, let him hasten and give notice to his master.

2. A herdsman, who preserves not a cow from accidents, who gives no alarm and informs not his master when she is in danger, shall pay the value of her *to her owner*, and a fine to the king.

"Danger;" distress. "Let him defend her;" or in the case of his inability, let him call aloud *for help*. "Shall pay the value of her" (XI 2); literally, bear *the loss*: he shall pay for that cow.

The *Retnácara*.

Cow is mentioned generally, comprehending other sorts of cattle.

XII.

MENU and NÁREDA:—The herdsman himself shall make

make good the loſs of a beaſt which through his want of due care has ſtrayed, has been deſtroyed by reptiles, or killed by dogs, or has died by falling into a pit.

" Has ſtrayed;" or has been ſeized, or " deſtroyed." By whom *deſtroyed?* The conſtruction of the ſentence anſwers that queſtion; " by reptiles." " Taken by himſelf;" *(for* CHANDÉSWARA *reads* swahatam, *which is explained, taken by himſelf, inſtead of* śwahatam, *killed by dogs*; this alſo comprehends ſeized by another. " Has died by falling into a pit;" or has died on a mountain of difficult acceſs, or the like. " Through his want of due care;" of the care which ſhould be uſed by a herdſman.

The *Retnácara.*

The cattle is loſt through want of the care due from the herdſman; hence the blame imputable to that herdſman, is a cauſe for his making good the loſs. The *Chintámeni.*

" Strayed;" paſſed out of ſight. Has been " deſtroyed by reptiles, or killed or bitten by dogs, or has died by falling into a pit or the like." And theſe are *only* examples; if a cow or other beaſt die, or ſtray, through want of ſuch manly exertion for its preſervation as is due from the herdſman, he muſt make it good to the owner. CULLÚCABHATTA.

According to him, the reading is *śwahatam* with a palatine ś; but, according to the *Retnácara,* it is read with the dental S.

XIII.

YÁJNYAWALCYA:—On *the* loſs *of a beaſt* by the fault of the herdſman, the fine ordained for him is thirteen *paṇ'as* and a half; and *he ſhall pay* the value *of the beaſt* to its owner.

On the loſs of a beaſt by the fault of the herdſman, he ſhall be forced to pay a fine of thirteen *paṇas* and a half, and *make good* the property loſt, to the owner; that is, the value of the beaſt as

determined by arbitrators. The verſe is *intended* to regulate the amount of the fine; the reſt had been already propounded.

The *Mitácſharâ.*

"The verſe;" this text (XIII). "The reſt," (the payment of the value to the owner,) already propounded (VI), is thus repeated. Such is the meaning *of the gloſs.*

Here "the property loſt" ſignifies its price. The *Retnácara.*

And thus, whenever it is declared in this chapter that property muſt be made good, its price is intended; for the property *itſelf* is *loſt* or deſtroyed. VISHNU expreſsly mentions the price:

XIV.

VISHNU:—By day, if cattle be in danger from venom or fire, and the herdſman go not *to their aſſiſtance,* he ſhall pay to their owner the price of cattle *thus* deſtroyed by his fault; and if he milk them without permiſſion, he ſhall be fined twenty-five *cárſhápanas.*

"Go not;" if he do not go to protect them. "*Cárſhápana*" will be explained.

The *Retnácara.*

Meaning, that it will be explained in the chapter on Meaſures.

But others remark, that the expreſſion "by day," denotes the time, whatever it be, during which the cattle are intruſted to the herdſman for cuſtody. "If he go not," though able; meaning his not defending the cattle, through negligence, indolence, knavery or the like. MENU *thus* explains a *cárſhápan'a;* "A *carſha* (or eighty *racticás*) of copper is called a *pan'a* or *cárſhápan'a.*" On which CULLUCABHATTA thus comments; "the quantity of a *carſha* of copper is called a *cárſhápan'a,* and *is* alſo *called* a *pan'a. Now,* a *carſha* is the weight of eighty ſeeds of the *gunjá:* for "five ſeeds of the *gunjá* are the firſt, *or forenſick, máſha;* ſixteen of theſe are an *acſha* or *carſha;* and four *carſhas* are one *pala**."

XV.

* AMERA's Dictionary, in the chapter on Traders and Huſbandmen. In law the *máſha* contains five *racticás;* in medicine, ten.

XV.

Brahme purána: — Should a herdſman, having received his hire, leave his cattle in a deſolate foreſt, and go for his pleaſure to the village, he ſhall be chaſtiſed by the king, like a ſurgeon *or barber*, who *leaves his maſter in the town*, and goes for his pleaſure to the woodlands.

2. When a cow, committed to the care of a herdſman, dies through his fault, he ſhall be compelled to make good the loſs, and pay a penalty to the lord of the land.

3. If a cow die by the violence of diſeaſe or the like in the ſtall of its owner, *who took no pains to heal or relieve her*, that owner ſhall be fined, and ſhall pay the wages due to his herdſman.

" Leave his cattle ;" leave a cow which has been ſeized with *any* diſtemper. " A ſurgeon ;" a phyſician *practiſing* on veins or the like. As he ſhould be chaſtiſed, if he leave his maſter, on whom he ought to attend, and go for his pleaſure to the foreſt ; ſo ſhould this man alſo *be chaſtiſed*. Conſequently, a ſurgeon, who goes for his pleaſure to the woodlands, is an example mentioned for the ſake of illuſtration. The word " *Sálácì* (ſurgeon) " is explained in the *Chintámeni*, a barber. Others explain the term, a perſon armed with a javelin *(Salácá)* or other weapon of offence : he is mentioned incidentally.

" Pay a penalty " (XV 2) : thus, by conſent of many Sages, the value muſt be made good if a cow die by the fault of the herdſman ; according to YAJNYAWALCYA, a fine ſhall *alſo* be paid ; and the forfeiture of the herdſman's wages is intimated in the *Brahme purána*. Such is the conciſe ſtatement *of the law*.

" If a cow die by the violence of diſeaſe or the like " (XV 3) : if ſhe be deſtroyed by ſickneſs or the like, in conſequence of her owner taking no pains to heal or relieve her, though able to give relief ;

relief; in that caſe he ſhall be fined by the king, and be forced to pay the wages due to the herdſman. The *Retnâcara*.

Here the fine to be paid by the owner of the cow muſt be that which is ſpecified under the ſupplementary or miſcellaneous title; for there is no perſon to ſue *the offender*: and in this caſe a taint of ſin is the conſequence of taking no care of the *diſeaſed* cow.

XVI.

MENU and NÁREDA:—A flock of goats or of ſheep being attacked by wolves, and the keeper not going *to repel the attack*, he ſhall be reſponſible for every one of them which a wolf ſhall violently kill.

2. But if any one of them, while they graze together near a wood, and the ſhepherd keeps them in order, ſhall be ſuddenly killed by a wolf ſpringing on it, he ſhall not in that caſe be reſponſible.

Under the term "a flock of goats or ſheep," are comprehended *all* beaſts liable to attacks. "Being attacked;" being aſſailed. So the *Retnâcara*. CULLÚCABHATTA *delivers* the very ſame *interpretation*.

"If any one of them, &c.;" if a wolf, ſpringing unperceived out of ſome thicket, kill any one of thoſe goats or ſheep which were intruſted to the ſhepherd, and were grazing together in the foreſt, the ſhepherd does not in that caſe incur blame.

CULLÚCABHATTA.

But if the herdſman careleſsly paſture the cattle in a dangerous ſpot, although there be ſafe places for paſturage, blame is imputable to him; but not, in caſe of a caſual attack by a tiger.

XVII.

NÁREDA:—By this rule ſhall a diſpute with the keeper of all ſorts of cattle be decided; and if any cows

cows die naturally, he ſhall be cleared by producing their tails and horns.

"By this rule, &c.;" thus have been declared conteſts with keepers of all ſorts of cattle, even of horſes and the like.

The *Retnácara.*

Conſequently, in a diſpute with a keeper of horſes, the very rule which has been declared muſt be applied *as in other caſes ſpecified.*

"By producing their tails and horns;" let him prove their death in any mode whatever. The *Chintámeni.*

Elſe there might be ſuſpicion of his having ſold them.

XVII.

MENU: — When cattle die, let him carry to his maſter their ears, their hides, their tails, the ſkin below their navels, their tendons, and the liquor exuding from their foreheads: let him alſo point out their limbs.

"Their ears, &c." under theſe are comprehended any tokens of the dead beaſt, not common *to, or perfectly ſimilar in, all animals.* "When cattle die:" when they die at remote diſtances, "let him point out their limbs;" their durable parts, as horns and the reſt. In ſome places, the text is read, "point out their horns or the like:" on that reading, other tokens, beſides thoſe generally carried as above mentioned, are comprehended under the term "or the like."

SECT. II. — *On Fines for Miſchief done by Cattle.*

XIX.

MENU:—On all ſides of a village or ſmall town, let a ſpace

a ſpace be left for paſture, in breadth either four hundred cubits, or three caſts of a large ſtick; and thrice that ſpace round a city or conſiderable town.

"Four hundred cubits; *literally*, one hundred *dhanuſh* or poles;" four cubits make one *dhanuſh*. "A large ſtick, or ſtaff;" three caſts or throws of that. Near the village on all ſides a ſpace exempted from the ſowing of grain and the like, ſhould be left for the paſture of cattle, in breadth either four hundred cubits, or three caſts of a ſtaff. Again; near a city or conſiderable town, it ſhould be made thrice as large. CULLÚCABHATTA.

"Stick" (*ſamyá*); the pin of the yoke. Thrice as much ground as that when thrown paſſes before it falls, is the ſpace to be left round a village. The *Retnácara*.

Samyá is explained by AMERA, the pin of the yoke*. Here the diverſity of opinions ſhould not be imputed as a fault; for it will be fully explained, that the ſpace is not rigidly determined.

"*Round* a city;" *round a conſiderable town* reſembling a city. The *Chintámeni*.

For a greater ſpace will be directed *to be left* round a city.

XX.

YÁJNYAWALCYA: — By the choice of the inhabitants, in proportion to the *whole* land, or by the authority of the king, ſhould the *common* paſture for kine be *regulated*; *but* every-where a twice-born man may take, as if it were his own, graſs *for his cattle*, fuel *for ſacrifice*, and flowers *for oblations*.

2. Let a ſpace be *left* between the village and the fields, in breadth four hundred cubits: let it be eight hundred cubits round a town, and ſixteen hundred round a city.

"By

* AMERA'S Dictionary; chapter on Traders and Huſbandmen.

"By the choice of the inhabitants;" *literally*, of the village: in proportion to the *number of* perſons inhabiting the village, or according to the ſmall or great quantity of land; or by the king's command; a ſpace of ground ſhould be left for the paſture of kine. Such is the ſenſe of the *firſt* part of the text.

The *Retnâcara*.

Some good portion of land ſhould be appropriated to the paſturage of kine and the like. The *Mitâcſharâ*.

The ſecond part of the text (XX) is thus explained in the *Mitâcſharâ*: a twice-born man, in want of graſs or fuel, may anywhere take graſs for kine, wood for *the ſacrificial* fire, and flowers for *oblations to* deities, as if they were his own, without oppoſition; but *he can* only *take* fruits from an unencloſed ſpot, for it is *thus* recorded by GÓTAMA:

XXI.

GÓTAMA:—He may take, as his own, graſs and ſacrificial fuel for his cattle and fire, and the bloſſoms of creepers and of lofty trees *for oblations*; and their fruit, if they be unencloſed.

This ſuppoſes pre-occupancy; for, ſhould a thing be unoccupied, property alſo veſts by occupancy in others beſides twice-born men, as is declared by the ſame authority.

XXII.

GÓTAMA:—*A man becomes* owner of wealth by purchaſe, partition, occupancy, hypothecation, and gain.

As for what is again ſaid in the following text:

XXIII.

GÓTAMA:—He, indeed, who ſeizes graſs without

aſking *permiſſion of the owner*, or wood, or flowers, or fruits, ſhall ſuffer amputation of his hand.

This ſuppoſes ſome other than a twice-born man; or ſuppoſes no diſtreſs; or implies a purpoſe different from that of *feeding* cows and ſo forth. Thus, if graſs or the like, belonging to a ſtranger, be taken by a twice-born man, for his cows, his ſacrifice, or his fire, there is no offence; but there is an obvious offence if the graſs or the like were produced by *the labour of* a ſtranger.

Others hold, that a *Brâhmana* may, without the king's permiſſion, take graſs or the like from any piece of ground belonging to the king, and not *already* occupied by another *ſubject*; but any other than a *Brâhmana* can *only* take graſs and the reſt from a piece of ground or ſpot occupied by himſelf with the king's permiſſion. What is declared by GÓTAMA (XXII), is intended to eſtabliſh property by the occupancy of a thing not already occupied by another; or to determine the property in a caſe of theft.

The other verſe (XX 2) is propounded to provide for the well-being of cows and other cattle, ſtanding, lying, or moving.

The *Mitâcſharâ*.

Others think the ſecond text (XX 2) is intended for an example of the ſpace *to be left*, as directed by the preceding verſe (XX 1).

Between the village and the fields, a ſpace meaſuring four hundred cubits ſhould be *left* on all ſides exempt from tillage; round a ſmall town *(carvaía)* the ſpace ſhould be eight hundred cubits in breadth; round a populous city, the interval ſhould be meaſured by ſixteen hundred cubits. VIJNYÁNÉSWARA.

A *dhanuſh* is a pole of four cubits. A town *(carvaía)* is larger than a village, and leſs than a city.

VÁCHESPATI MISRA.

The term is ſynonymous with large village, or *mahâgráma*.

The following texts, cited in the *Retnácara*, define a village, town and city.

XXIV.

Márcandèya purána: — An inhabited place, in the midſt

midſt of fields and meadow land, where men of the ſervile claſs moſtly dwell, and where agriculture thrives, is called *gráma*, or village.

2. An elevated ſpot, which has ſubſtantial buildings, and is ſurrounded on all ſides by a ditch, if it be half or a quarter of a *yójana* in length, and the eighth part *of a yójana* in breadth, is a city, or *pura:*

3. It is beſt, if there be deep water on the eaſtern ſide of it; if it be inhabited by perſons of pure lineage alone; and if abject races be excluded. *Should the length be* half of that *deſcribed*, the *place is called* a town or *c'hét'a:* and *one* leſs than that is *called* a ſmall town, or *carvat'a.*

That inhabited place where the ſervile claſs is numerous, and where many huſbandmen reſide, is named *gráma* or village, *and it is ſituated* in the midſt of fields and grazed land. Thus, on all ſides of the village, there ſhould be paſture; and round this again ſhould be the fields. The reſidence of prieſts, ſoldiers, merchants, and the like, is beſt in cities and towns: and that is intimated in a preceding chapter (Chap. II. v. IV).

A place abounding in lofty edifices ſurrounded with walls; itſelf encompaſſed by a ditch, and ſpreading over two *króśa*, or one *króśa* only, is called *pura:* and even that is a city *(nagara);* for, in the Dictionary of AMERA, *pur (the ſame with* pura) is mentioned as ſynonymous with *purì* and *nagarì (or* nagara)*. It is beſt if there be deep water on the eaſt. Half of that *length*, *or* half a *króśa*, conſtitutes a town, or *c'hét'a;* and leſs than that, but greater than a village, is a ſmall town, or *carvat'a.*

Is it not derogatory to YÁJNYAWALCYA, that he has not mentioned the ſpace to be left round a town or *c'hét'a?* The objection is anticipated and anſwered in the *Retnácara:* It muſt be inferred, even though not mentioned, that the paſture ground for kine ſhould be *regulated* in proportion to the abundance of cattle in the village or the like. Conſequently, a ſpace of four hundred cubits is only mentioned for the ſake of illuſtration: the real meaning

* Dictionary of AMERA; chapter on Cities.

meaning is, that paſture ſhould be left for kine, in proportion to the *number of* inhabitants.

XXV.

MENU :—Within that *paſture ground*, if cattle do any damage to grain in a field unencloſed with a hedge, the king ſhall not puniſh the herdſman.

" Within that ;" within the paſture ground of the village. The *Chintámeni*.

XXVI.

VISHNU :—No offence *is imputable to the herdſman*, if the cattle graze, for a ſhort time, in an unencloſed field, near the road, the village, or the paſture ground.

" If the cattle graze " is ſupplied *to explain the purport of the text*. Should a field, which is ſituated near the road, the village, or the ſpace left for paſture, and which is unfenced, be grazed by cows or the like for a ſhort time, there is no offence on the part of the herdſman : but if they graze there long, blame is imputed to him ; for it is conſidered as ariſing from his fault. The *Chintámeni*.

The very ſame *expoſition is found* in the *Retnácara*.

XXVII.

NÁREDA :—The herdſman is not anſwerable for damage done in a field adjoining to a village or a paſture ground, and which is unfenced.

" Paſture ground ;" a ſpace of graſs land reſerved for feeding cows and the like : a field adjoining to that. The *Retnácara*.

XXVIII.

XXVIII.

YÁJNYAWALCYA:—No offence exiſts, if *damage be done* unintentionally in a field ſituated near the road, the village, or the paſture ground: but if the cattle be wilfully grazed there, the offender is liable to be puniſhed as a thief.

Conſequently the declaration, that "there is no offence if the field be near the road or the paſture ground," is reſtricted to the caſe of cattle accidentally grazing in it: and this alſo has been intimated by VISHNU in another form; "if the cattle graze for a ſhort time, &c." (XXVI). Such is the opinion delivered in the *Chintámeni*.

By the term uſed in the texts of VISHNU, NÁREDA and YAJNYAWALCYA, "within *the paſture ground, &c.*" it is declared, that no blame *falls on the herdſman* if the field be ſituated near the paſture ground. But there can be no grain in the paſture ground. However, when grain is ſown within the ſpace of four hundred cubits, the paſture ground is reduced by the conſent of the inhabitants or otherwiſe: and in the text of MENU (XXV), "within that," or there, is the ſeventh or local caſe uſed in the ſenſe of proximity; as in the line, "CRÍSHNA ſports in the woods (in, or) near the *Cálindí (or Yamuná)*:" and, even according to thoſe who hold that the name of the river has in that example the ſecondary ſenſe of its neighbourhood, the word there, or within that, may in the preſent inſtance ſignify near that *paſture ground*. Thus others explain the text.

Should a field, ſituated near the road or highway, or near the village or paſture ground, be grazed by cows, without deſign *on the part of the herdſman or his maſter*, no blame is imputable either to the cow-herd, or to the owner of the cattle; that there is no offence, is mentioned, to exempt them from penalties, and from paying the value of the grain damaged. But, if the cattle be wilfully grazed there, the offender ſuffers puniſhment, as a thief, for grazing cattle there by deſign: namely, ſuch a puniſhment as is inflicted on a thief. The text of YÁJNYAWALCYA (XXVIII) is ſo explained in the *Mitácſharâ*.

XXIX.

MENU :—Should cattle, attended by a herdſman, do miſchief near a high way, in an encloſed field, or near the village, he ſhall be fined a hundred *paṅ́as ;* but, againſt cattle which have no keeper, let the owner of the field ſecure it.

Near a highway, or near the village, in a field of arable land encloſed with a hedge, ſhould cattle, attended by a herdſman, *but* not reſtrained by him, enter the field by the gate or otherwiſe, and graze in it, he ſhall be fined a hundred *paṅ́as* : and, as the beaſt cannot be fined, the herdſman muſt pay the fine. But the perſon who watches the field muſt drive away beaſts which have no keeper, if they be found grazing there.

CULLÚCABHATTA.

XXX.

NÁREDA :—If damage be done to grain by cows or the like breaking through a fence, the herdſman ſhall in that caſe be puniſhed, if he did not reſtrain the cattle, though able *to do ſo.*

" A fence ;" an obſtacle. CHANDÉSWARA.

" Breaking ;" this follows the regular ſenſe of the crude verb *crĭti*, cut. " The herdſman ſhall be puniſhed ;" if he do not reſtrain the cattle, he ſhall be fined a hundred *paṅ́as :* for the text coincides with that of MENU (XXIX). But, perceiving the breach in the fence, if he immediately reſtrain the cattle, no blame is imputable to him. " Though able ;" from this expreſſion *it appears that* no blame is imputed to him, if he then happen to be unable to reſtrain a bull eager to approach a cow : and ſo in other caſes. Thus other lawyers declare *the rule.*

XXXI.

UŚANAS :—Neither anceſtors, nor deities, taſte the offerings

offerings of that man who demands compenſation for corn deſtroyed by cows.

It is thus ordained, that the owner of the corn ſhould not take the value of grain conſumed by cows. But if, violating the preſcribed ſyſtem of duty, he do demand *compenſation*, the judge muſt enforce payment; for there is no exception *relative to cows* in forenſick law. The judge muſt *of courſe* enforce payment of the value of grain conſumed by any other beaſt.

It is declared, that there is no offence if damage be done to grain in a field unencloſed with a hedge (XXV); and that there is offence, if corn, in a field encloſed with a hedge, be eaten *by cattle*: what ſort of a hedge *ſhould be made?* MENU himſelf deſcribes it.

XXXII.

MENU:—Let the owner of the field encloſe it with a hedge *of thorny plants*, over which a camel could not look; and let him ſtop every gap, through which a dog or a boar could thruſt his head.

Round a field of arable land, let him make a hedge of thorny plants, in ſuch a mode that a camel ſtanding on the other ſide may not overlook it; and let him ſtop every gap whatſoever through which a dog or a boar could thruſt his head.

CULLÚCABHATTA.

XXXIII.

NÁREDA:—Round a field near the highway, a hedge ſhould be made, over which a camel could not look; which no beaſt could overleap; and which neither a dog nor a boar could break through.

"Over which a camel could not look;" that is, of ſuch a height that a camel ſtanding on one ſide of it could not look over it to the other ſide.

HELÁYUDHA.

It follows, that the hedge ſhould be high; for, if a camel, paſſing by, ſee the corn encloſed by it, then, breaking the hedge, and impelled by hunger, he cannot be reſtrained by his keeper. If a low hedge be made, there is no offence in the caſe of miſchief done by a camel *in ſuch a field*, any more than in *the caſe of a treſpaſs on* a field unencloſed by a hedge: and ſo in reſpect of elephants, horſes, and the like.

Over which hedge cattle cannot reach, and ſee the grain within it. The *Párijáta*.

XXXIV.

SANC'HA and LIC'HITA:—To a field near the road a hedge ſhould be made, over which a camel could not look, and through which a dog or a boar could not open a paſſage.

"A paſſage;" *literally*, an interval: *that is*, an opportunity *of entrance*. The *Retnácara*.

Conſequently ſuch a fence muſt be made, by means of which cattle may be prevented from forcibly deſtroying the corn. If that be not done, no penalty is incurred by the keepers of the ſeveral ſorts of cattle. At what ſeaſon a fence ſhould be made, CÁTYÁYANA declares, for the benefit of the huſbandman.

XXXV.

CÁTYÁYANA:—When the grain is not yet produced, let him make a ſtrong fence; for beaſts, eager after once taſting what they reliſh, are with difficulty hindered.

"Beaſts" here ſignify cattle. The *Retnácara*.

"Strong;" *literally*, great: by this is ſuggeſted a hedge over which a camel cannot look, and through which a dog or a boar cannot open a paſſage.

"After once taſting what they reliſh:" the meaning is, when they taſte things which are deſired by them.

XXXVI.

XXXVI.

MENU:—In other fields, the *keeper of* cattle *doing miſchief* ſhall be fined one *paṅ'a* and a quarter; but, in all places, the value of the *damaged* grain muſt be paid: ſuch is the fixed rule concerning a huſbandman.

In other fields, not adjoining to the road-ſide and the like, ſhould miſchief be done by cattle, the keeper ſhall be amerced. It ſhould be here noticed, that the fine is one *paṅ'a* and a quarter for every head of cattle. So the *Retnácara;* and CULLÚCABHATTA *gives* the very ſame *interpretation.*

In other fields, ſituated at a diſtance *from the highway and the like,* diſtinct fines are ordained for diſtinct kinds of cattle: ſo the *Chintámeni.* Thoſe fines will be ſubſequently mentioned.

"In all places" (XXXVI); the grain conſumed by *cattle* in any field, muſt be made good to the owner of it, by the herdſman, or by the owner *of the cattle,* according as the offence *is imputable to one or the other.* Such ſhould be the deciſion.

CULLÚCABHATTA.

Thus property in the field is attributed to the huſbandman by this very gloſs of CULLÚCABHATTA. It appears from the phraſe "in all places" (XXXVI), that the grain eaten *by cattle* off a field encloſed with a hedge as above mentioned, muſt alſo be made good to the huſbandman.

XXXVII.

SANC'HA and LIC'HITA:—A cow, grazing during the night, *brings on its owner, or keeper, a fine of* five *máſhas;* during the day, three *máſhas;* and for one hour, (*muhúrta* *,) one *maſha:* but no fine *is impoſed if ſhe graze* in the village.

"Grazing;"

* *Muhûrta,* the thirtieth part of a day and night.

"Grazing;" eating until ſatiated. Hence, if ſhe graze *by day* until ſhe be ſatisfied, *the fine is* three *máſhas*. But if ſhe graze for one hour only, a fine of one *máſha* ſhould be levied. However, no fine ſhall be impoſed for her grazing within the village; that is, in a field within the limits of the village and the like. A *máſha* here ſignifies the twentieth part of a *cárſhápana*, as declared by NÁREDA.

XXXVIII.

NÁREDA: — But a *máſha* may be conſidered as the twentieth part of a *cárſhápana*.

And that is meant of ſilver. Accordingly the author of the *Bháſhya* ſays:

In matters of fine it is proper to count by *máſhas* of gold; but, for grain eaten by cattle, *the fines are regulated* by other *máſhas*, *namely*, *thoſe* of ſilver.

A *cárſhápana* is alſo *a meaſure* of ſilver *as well as of copper*; and here a *máſha* of ſilver contains two *raćticás* or ſeeds of the *gunjá*, each equal to three barley-corns: as is declared by MENU (Chap. VIII. v. 134 and 135). The text of SANC'HA and LIC'HITA is thus expounded in the *Retnácara*, and alſo in the *Vivádá Chintámeni*.

Since the author of the *Bháſhya* directs the *máſha* of ſilver in the caſe of grain eaten by cattle, *becauſe he is* ſcrupulous of the great inequality in compariſon with the fine of one *paña* and a quarter, whether the *máſha* containing ſixteen *raćticás* be taken, as declared by VRÍHASPATI ("but the twentieth part of a *palá* is called a *máſha*"), or the *máſha* containing five *raćticás*, as mentioned by MENU ("five *críſhnalas* or *raćticás* of gold are one *máſha*"); *therefore* the rule is thus ſettled by authors, who think that the *máſha* of ſilver, containing two *raćticás*, as mentioned by MENU, ſhould not be abandoned: if the beaſt eat grain during the night until it be ſatisfied, a fine of ten *raćticás* of ſilver *ſhall be paid* to the king; if it eat ſo long during the day, ſix *raćticás* of

of ſilver; if it do not eat until it be ſatisfied, but graze for ſome ſhort time, whether by night or day, two *ractícás* of ſilver: and the value of the grain conſumed in the field muſt be made good to the huſbandman. This proceeds on the ſuppoſition of one *paṅ'a* and a quarter being equal to two *ractícás* of ſilver: if they be unequal, a diſtinction muſt be aſſumed, from the *ſort, or from the quantity, of* grain deſtroyed. But others explain a *paṅ'a* and a quarter in the text of MENU (XXXVI), as ſignifying a *paṅ'a and a quarter* of copper.

As for the opinion, that a fine of one *máſha* for a cow grazing during one *muhúrta* is directed, to obviate the doubt, "what fine ſhould be impoſed in the caſe of a cow grazing during twilight; becauſe diſtinct rules are delivered for the reſpective caſes of a cow grazing during the day and during the night;" and accordingly the law declares, that "twilight, called *múhurta*, is conſidered as uniform, whether *the day* increaſe or wane;" and here the word *múhurta* denotes a particular hour *of the day:* that opinion is wrong; for common ſenſe oppoſes the ſame regulation, when *a cow* has grazed *in a ſtranger's field* during the night, whether ſhe grazed *there* for ſome trifling ſpace of time, or until ſhe were ſatisfied: and there is no *real* difficulty, ſince twilight, excluſive of day and night, is not admitted in philoſophy.

"But no fine, in the village" (XXXVII): ſince this has obviouſly the ſame import with the text of MENU (XXV), no fine is impoſed for a cow grazing near the village, or near the high way; *it is* not *meant, that* no fine *is impoſed* for *her* grazing on land appropriated to dwelling-places. "Village" is here uſed in the locative caſe with the ſenſe of proximity, as *in the example quoted;* "CRĬSHNA ſports in the foreſt (in, *that is*) near the *Yamuná.*" Conſequently there is no difficulty: and it ſhould be ſo underſtood.

The following text elucidates what is obſerved in the *Chintámeni*, that diſtinct fines are ordained for diſtinct kinds of cattle:

XXXIX.

CÁTYÁYANA:—*For miſchief done by* a cow, let the king compel *the owner* to pay a quarter of a

 paṅ'a;

pan'a; for a female buffalo, two quarters: but for goats, ſheep, and calves, the fine ordained is a quarter *of that which has been laſt mentioned.*

Here a quarter of a *pan'a* ſhould be conſidered as the fine *ordained* if the grain were eaten during the night. A quarter of a *pan'a* is the fourth part of a *cârſhâpana.* The *Retnâcara.*

Pan'a here ſignifies *cârſhâpana.* The *Chintâmeni.*

This obviouſly means a *cârſhâpana* of ſilver, conſiſting of forty *criſhnalas* or ſeeds of the *gunjâ:* for the text of NÁREDA declares, that a *máſha* is the twentieth part of a *cârſhâpana* (XXXVIII); and the text of MENU expreſſes, that "two *criſhnalas* or *râćticas* of ſilver are conſidered as one *máſhaca.* A quarter of a *pan'a* (or ten *criſhnalas* of ſilver) is the ſame with five *máſhacas* of ſilver: and this coincides with the text of SANC'HA and LIC'HITA (XXXVII).

XL.

GÓTAMA:—Five *máſhas* for a cow, ſix for a camel, ten for a horſe or a female buffalo, and two each for a goat and a ſheep.

Since *the word* horſe is here exhibited in the maſculine gender, the ſame amercement ſhould be paid for male buffalos and the reſt which is directed for females; and the ſame for a mare and for a horſe. But cows and female buffalos are inſtanced, conſidering the excellence of the female, which affords milk for conſumption.

"And two each for a goat and a ſheep;" the meaning is, two and a half. To exhibit the coincidence of this text of GÓTAMA (XL) with that of CÁTYÁYANA above cited (XXXIX), ſome explain "a quarter," the fourth part of the fine juſt mentioned for a buffalo grazing in a ſtranger's field; that is, a fourth part of two quarters of a *pan'a:* for it has the ſame import with the text to be quoted from YÁJNYAWALCYA (XLII). Others ſay, it ſuppoſes particular miſchief happening without deſign. This rule of GÓTAMA concerns cattle grazing during the night.

XLI.

XLI.

SANC'HA and LIC'HITA:—For the young of every ſort of cattle, a *máſha*; for a female buffalo, ten; for an aſs and a camel, ſixteen; for a goat and a ſheep, four.

This text concurs with *thoſe of* GÓTAMA and CÁTYÁYANA, in directing a fine of ten *máſhas* for a female buffalo. "Sixteen for an aſs and a camel," contradicts GÓTAMA, "Four for a goat and a ſheep," contradicts both GÓTAMA and CÁTYÁYANA: and "a *máſha* for *calves*, *or* the young of cattle," contradicts CÁTYÁYANA.

On this point, ſome hold that the connexion of terms is remote in the phraſe "ſix for a camel; ten for a horſe or a female buffalo" (XL): in this manner; for a horſe, or a female buffalo, ten; for a camel, ten and ſix, or ſixteen, and ſo forth; and the meaning of "four for a goat and a ſheep" is, two for a goat, and two for a ſheep. "A *máſha* for young cattle" is here meant of a *máſha* conſiſting of five *críſhnalas*. It ſhould not be objected, that the *máſha* of five *críſhnalas* is inadmiſſible, becauſe MENU has defined the *máſha* of ſilver as conſiſting of two *críſhnalas* only. Since MENU has alſo defined the term *cárſhápana* as relating to copper only, there could not be alſo a *cárſhápana* of ſilver; it may therefore be ſaid, that the ſeveral terms likewiſe ſignify thoſe ſeveral weights of iron or other *metals*. Or, "a *máſha* for young cattle" may ſuppoſe very young cattle; and the text of CÁTYÁYANA (XXXIX) may ſuppoſe older calves. The young of all ſorts of cattle, or any beaſts in the firſt period of life, are intended.

XLII.

YÁJNYAWALCYA:—*The owner of* a female buffalo, doing damage to grain, ſhall be fined eight *máſhas*; *of* a cow, half that *amercement*; and *of* a goat or ſheep, half *again* of this amercement:

2. For

2. For cattle eating and lying down in the field, the fine is double the amercement mentioned. It is alſo the ſame if they treſpaſs on preſerved paſtures; and the fine for an aſs or a camel is the ſame with that for a female buffalo.

A female buffalo, doing miſchief in a ſtranger's field, ſhall be fined eight *máſhas*: a cow half that, or four *máſhas*; goats and ſheep ſhall be fined two *máſhas*. As buffalos and the reſt have no intereſt in wealth, the perſon who owns them is intended. A *máſha* here ſignifies the twentieth part of a *paṅ'a* of copper; for NÁREDA records, that a *máſha* is conſidered as the twentieth part of a *paṅ'a*, and the text concerns *a treſpaſs* without deſign.

The *Mitácſharà*.

Some remark it, as the ſenſe of the *Mitácſharà*, that the fine is *regulated by a* máſha *conſiſting of* four *raćticás* of copper. But that is erroneous; for the author of the *Bhâſhya* declares *fines to be regulated by* the *máſha* of ſilver, in the caſe of cattle grazing *on a ſtranger's ground*: and thus, according to the *Mitácſharà*, the fine is *determined by a* máſha, *or quantity of* ſilver weighing five *raćticás*: and that contradicts the opinion already quoted from the *Retnácara* and other works. Apprehending its inconſiſtency with the texts which ordain a fine of five *máſhas* (XL), *the author of the* Mitácſharà *adds*: the text concerns a treſpaſs without deſign; meaning damage done to grain without deſign on the part of the keeper. But if the damage happen with his previous knowledge, the fine is that *which is* directed by CÁTYÁYANA and the reſt. Such is his opinion.

Others apply the two texts which ordain fines of eight and ten *máſhas*, according to the particular damage done, or particular age of the beaſt.

XLIII.

NÁREDA:—Let the king compel *the owner of* a cow *which has done miſchief*, to pay a fine of one *máſha*; and *of* a female buffalo, two *máſhas*: and let the fine

fine for goats, ſheep, or young cattle, be half a *máſha*.

This ſuppoſes corn conſumed, but ſo that the root remains fit for replanting. Such is the interpretation propoſed in the *Mitácſharâ*.

" For cattle eating and lying down " (XLII 2): if cattle, after eating grain in a ſtranger's field, ſleep there undiſturbed, the fine ſhall be double; if, accompanied with their young, they graze and lie down, it ſhall be quadruple the fine that has been mentioned: for a text ordains—

XLIV.

Twice as much is directed for cattle abiding there, and four times as much for cattle accompanied by their young.

This *is* alſo *ſtated* in the *Mitácſharâ*.

" It is the ſame, &c." (XLII 2); even for miſchief done in a preſerved paſture, the fine is ſimilar to that *which is ordained* in the caſe of miſchief done by cattle in a field. The *Retnácara*.

" A preſerved paſture;" a preſerved ſpace of ground, abounding in graſs and wood. If miſchief be there done, the fine is equal to that for treſpaſſes on other fields. " If they treſpaſs;" if buffaloes and the reſt *do miſchief*. The *Mitácſharâ*.

The *Retnácara* ſhould alſo be quoted on this point. The fine for an aſs or a camel is the ſame with that paid for a female buffalo; in whatever fine *the owner of* a female buffalo is amerced in each caſe, in ſuch a fine ſhall *the owner of* an aſs or a camel be amerced in the ſame caſe. Such is the opinion expreſſed in the *Mitácſharâ*.

XLV.

Vishnu:—If a female buffalo do injury to grain, her keeper ſhall be fined eight *máſhas*; or *if* a horſe, a camel, or an aſs *do ſo, the amercement is*

the ſame; if a cow *treſpaſs,* half *that fine;* if a goat or ſheep *do miſchief,* half that again: if the cattle lie down after grazing, *the amercement is* doubled.

" A horſe, a camel, or an aſs;" ' if *they* do injury to grain,' is brought forward *from the preceding ſentence.* The *Ratnácara.* Conſequently it has the ſame import with the text of YÁJNYAWALCYA (XLII); but VISHNU (XLV) diſagrees with GÓTAMA (XL), and with SANC'HA and LIC'HITA (XLI). On this point ſome *lawyers* obſerve, that, in particular countries, an aſs and a camel being *held* equal to a female buffalo, the text of VISHNU *is* there *applicable;* in ſome places, an aſs and a camel conſuming more than a female buffalo, the text of SANC'HA and LIC'HITA there *regulates the fine.*

XLVI.

NÁREDA:—Let *the owner or the keeper of* cows be fined a quarter *of a* cárſhápana; *and the proprietor or the herdſman of* female buffalos, twice as much; another fine of a *máſha* is ordained for a goat or a ſheep *treſpaſſing* with its young.

2. For cattle eating grain until they be ſatisfied, the fine is double; but for cattle abiding, *it is* quadruple: and the puniſhment of theft is ordained by the wiſe, for thoſe who graze cattle *on a ſtranger's ground* in *their own* ſight.

" A quarter;" the fourth part of a *cárſhápana,* or ten *raćticás* of ſilver. " Twice as much;" twenty *raćticás* of ſilver. " Another fine of a *máſha;*" ſince the fine for goats and ſheep is in every inſtance declared half that for a cow, it ſignifies a *máſha* containing five *críſhnalas.*

CHANDÉSWARA explains the *term uſed in the text,* ſatisfied with grain eaten; and " abiding," paſſing the night there after grazing.

grazing. This ſuppoſes cattle paſtured unperceived; but, for them who graze cattle openly *on a ſtranger's ground*, the puniſhment of a thief is ordained. "Who graze cattle in their ſight" (XLVI 2); who paſture them by force, even in the preſence of the huſbandman.

In the *Chintámeni* a ſimilar expoſition is delivered: it is there ſaid, that the ſenſe *of the firſt hemiſtich* (XLVI 2) is *this;* if they paſs ſuch a length of time that they lie down after eating grain, and afterward, hunger returning, graze *there* again.

We cannot diſcover why it is ſaid "even in the preſence of the huſbandman;" for every difficulty is removed by ſaying, "in the *ſight or* preſence of the herdſman, who ſuffers the cattle to conſume the grain."

XLVII.

NÁREDA:—But if a cow, ſtraying by the fault of the herdſman, damage a field, no penalty is in that caſe exacted from the owner: the herdſman ſuffers the puniſhment of that *offence.*

2. But he *(the owner)* ſhould reſtrain the cows from *fields of* grain: if they graze there *with his knowledge,* the blame falls on both maſter and herdſman; the maſter ſhall be compelled to pay the value of the grain and a fine, and the herdſman ſhall be ſcourged.

In a *preceding* text (XLVI 1) a rule is propounded for an amercement of a quarter of a *cárſhápana*, and ſo forth, *to be levied* on cows and other cattle. That cannot be ſtrictly applicable, becauſe cows and the reſt have no property; therefore *the Sage* himſelf announces the inference (XLVII). "Straying;" going out of ſight. If cows intruſted to a herdſman deſtroy grain out of his maſter's ſight, by the fault of that herdſman, the penalty falls on him alone: in a ſimilar caſe, if their owner ſee them eating the grain, he ſhould drive them off; but if he reſtrain them not, he muſt pay the amercement, and make good the value of the grain conſumed: for ſuch is the ſenſe attributed to *the word*

penalty,

penalty, ſince the maſter is concerned. To chaſtiſe the herdſman, a ſcourging is directed: that alſo is a penalty. This ſhould be underſtood: and CHANDÉSWARA virtually gives the ſame interpretation.

XLVIII.

YÁJNYAWALCYA:—As much grain as ſhall be deſtroyed, ſo much produce ſhall be *paid* to the huſbandmen; the herdſman ſhall be ſcourged; but the owner of the cattle incurs the fine already declared.

Grain is mentioned to denote generally the produce of fields. As much ſtraw, grain, or the like, as is deſtroyed by cows or other cattle, ſo much produce ſhall the owner of them be compelled to pay to the owner of the field; according to the valuation determined by arbitrators, in this form, "from ſo much land the produce is ſo much." But the herdſman ſhall only be beaten; he ſhall not be compelled to pay for the produce: the ſcourging of the herdſman, accompanied by the pecuniary fine above mentioned, muſt be applied to the caſe of damage done to grain by his fault (XLVII 1). Again: the owner of the cattle incurs the fine already declared, if grain be injured by his own fault; *he is* not *liable to* a ſcourging. But, in every caſe, the produce muſt be made good by the owner of the cattle alone; for he participates in the produce of the field, by means of milk obtained from female buffalos and the like, fed on graſs, the produce of that field. The produce, remaining above the *quantity* conſumed by the cows and the like, ſhould be taken by the owner of the cattle; for he has abſolutely bought it by payment of the price adjudged by arbitrators. VIJNYÁ ÉŚWARA.

Conſequently, in thoſe caſes alſo where the herdſman ſhall be amerced, the value of the grain conſumed ſhall be paid by the owner of the cattle to the proprietor of the field. Such is his meaning. But that is not the opinion of CHANDÉSWARA; for, in a gloſs on the following text of NÁREDA (XLIX), he ſays, "if the corn be deſtroyed, together with its root, both *the maſter and*

and herdſman being in fault, the maſter muſt pay grain to the amount of the damage, and a fine."

XLIX.

NÁREDA:—But if the corn be deſtroyed, together with its root, let the owner *of the land* receive the *quantity of* grain, *which would have been produced* from that *field;* let the herdſman be diſmiſſed with blows; and let the amercement fall on *his* maſter.

In the firſt part of the text of YÁJNYAWALCYA (XLVIII) it is directed, that the grain ſhall be received by the huſbandman; but the perſon from whom it ſhall be received is not mentioned. Therefore, ſince the king muſt receive the amercement, it may thence be argued, from ſuggeſtions of common ſenſe, that, in the caſe where the herdſman ſuffers the puniſhment, *or incurs the penalty* (XLVII 1), both the huſbandman and the king receive a penalty.

In the preceding texts fines are declared againſt female buffalos and other cattle; and that is incongruous, ſince they have no wealth: hence it is ſaid, the herdſman ſhall be ſcourged (XLVIII). But *(it is added)* the owner of the cattle incurs the fine; this, however, ſuppoſes the caſe of a fault on the part of the owner of cattle. CHANDÉSWARA's opinion muſt be ſo underſtood. Conſequently it ſhould be held, on his conſtruction *of the law*, that a penalty muſt alſo be paid to the owner of the field, by the ſame perſon, and in the ſame caſe, in which a fine is paid by that perſon to the king.

"With blows" (XLIX); with hurt proportioned to the offence. Corn is conſidered as deſtroyed, together with its root, when the miſchief is ſuch that it cannot be replanted.

CHANDÉSWARA.

Is not this text ſuperfluous; ſince the ſame ſenſe is deduced from a former one, "the maſter ſhall be compelled to pay the value of the grain and a fine" (XLVII 2)? This text is a reply to the queſtion, to whom ſhall the value of the grain be paid? and thus, if the corn can be replanted, and the crop be *ſo* obtained

tained in consequence of a pecuniary payment *for the charge of replanting the corn*, an equivalent shall not be again paid for the *plants* eaten.

L.

VISHNU :—And, in every case, *the offender shall be compelled to pay* the value of the grain destroyed.

"Shall be compelled to pay" must be supplied in the text. "In every case;" whether the cattle be attended or unattended. The *copulative* "and" connects the subject with the fine *payable* to the king. The *Retnácara*.

LI.

NÁREDA :—But, to that man who demands *compensation for* grain consumed by cows, *the value of* it must be paid, as determined by arbitrators: wherever destroyed,

2. Grass must be made good to its owner, and grain to the husbandman. A fine indeed is also ordained, if corn be trodden down by cows.

"The grain consumed;" in proportion to the grain consumed, *must payment be made*. "Grass;" *common* herbage: and this payment for herbage *occurs* in the case of a reserved pasture. The *Retnácara*.

"Grass;" blades of corn. "The owner;" the proprietor of the cattle. The blades of corn or the grain must be made good by him to the husbandman. Such *is* the sense of *the texts*.

The compensation may be taken *consistently with municipal, but not with moral, law*, for it is a cause of *sinking to* a region of torment. It should not be taken *by a righteous man*, for *that is discouraged by* the text of USANAS above cited (XXXI). The *Chintámeni*.

The meaning of *that gloss of* the *Chintámeni* is, that NÁREDA intimates a right of taking *compensation*, by this expression "that man

man who demands *it*." "As determined by arbitrators:" adjudged by arbitrators in this form, "so much grain *would have been produced* in this field."

The *apparent* contrariety of *texts*, propounding inconſiſtent fines for the very ſame offence, muſt be reconciled by regulating *the fine* according to *the treſpaſs committed* by day or night, with or without deſign. The *Retnácara*.

Thus the *apparent* inconſiſtency *of the texts* of GÓTAMA, YÁJNYAWALCYA and the reſt, ſhould be reconciled, as propoſed in the *Mitácſharà* and other works. Such alſo is the opinion *intimated* in the *Retnácara*.

SECT. III.—*On Trespasses not finable.*

On the ſubject of herdſmen,

LII.

NÁREDA *ordains*:—If he be ſeized by the king or by a crocodile, ſtruck by thunder and lightning, bitten by a ſerpent, *hurt by a* fall from a tree,

2. Smitten by a tiger or the like, or attacked by diſeaſe, there is no offence on the part of the herdſman; nor *is* any blame *imputable* to the owner of the cattle.

If the herdſman be ſeized by the king for the purpoſe of *employing him in* the performance of work, or if he be ſeized by an alligator; under ſuch circumſtances, ſhould grain be eaten by the cattle committed to his charge, no blame is imputable to him. If he be ſtruck "by thunder and lightning;" a diſtinction muſt be ſuppoſed between theſe, from ſome difference in the mode *in which he is ſtruck*. Sometimes a man ſurvives, though ſtruck by

thunder and lightning: therefore no blame is imputable to a herdſman affected by ſuch an accident. " Nor to the owner of the cattle:" if the herdſman die in conſequence of ſuch an accident, no blame is imputable to the owner of the cattle, provided he was ignorant *of the treſpaſs*.

LIII.

YÁJNYAWALCYA:—A bull, conſecrated cattle, a cow which has lately calved, a ſtray, and other beaſts which are not attended by a keeper, ſhould be ſet free, *for* they are impelled by GOD and the king.

" A bull" kept for impregnation. " Conſecrated cattle," diſmiſſed in honour of the deity, according to the form for conſecrating bulls. " A cow which has lately calved;" within ten days after her calving. " A ſtray;" wandering from its own herd, and coming from another country. Theſe " ſhould be ſet free;" even though they conſume a ſtranger's grain, no fine ſhall be *levied*. Cattle alſo, " which are not attended by a keeper, are impelled by GOD and the king;" they are urged by GOD and the king; therefore, if they deſtroy grain, no fine ſhall be levied. Under the term " other beaſts," elephants, horſes, and the like are comprehended; and they are mentioned by USANAS.

The *Mitácſharâ*.

In the *Retnácara* alſo, the ſame *expoſition is given*. Since a fine cannot be impoſed for conſecrated cattle, which have no *human* owner, the mention of them *muſt be intended* for the purpoſe of illuſtration. As conſecrated cattle occaſion no amercement, ſo bulls and the reſt *occaſion none*. This alſo *is noticed in* the *Mitácſharâ*.

A bull cannot be reſtrained. Conſecrated cattle are beaſts diſmiſſed in honour of the deity. As land dedicated to the deity, and the veſſels appropriated to worſhip, are held and kept by the *inſtituted* worſhipper of the deity; ſo, if ſome perſon feed, with graſs or the like, cattle conſecrated by any man, it might be queſtioned

queſtioned whether he ſhould be liable to a fine; and ſince it might be queſtioned, in the caſe of a bull diſmiſſed, whether the diſmiſſer be liable to a fine, becauſe he is the remote cauſe of the treſpaſs, *therefore* it is declared *that* no fine *ſhall be impoſed:* or it is ſo declared, on the doubt whether the keeper might be fined for miſchief done by conſecrated cattle attended by a keeper. It might be queſtioned, whether a fine ſhould be *levied for the treſpaſs* of a ſtray, when the owner is aſcertained by long watching the beaſt: and it is declared, that no fine ſhall be exacted for the tranſgreſſion of thoſe *herdſmen* who abſcond through fear of GOD or the king; nor from owners of unattended cattle, provided the cattle be fortuitouſly unguarded; nor for cattle terrified by the fall of thunder or the like. Thus others expound the law.

"Strays," coming from another village, or wandering from the herd, *and* which are not attended by a keeper. Such is the ſenſe *of the text.* The meaning is, that there is no offence, if cattle, running away on ſeeing an army, or on hearing *ſome frightful* noiſe or the like, graze in a ſtranger's field. The *Chintámeni.*

But the ſenſe is thus *ſtated* in the *Retnácara:* cattle which have ſtrayed in conſequence of rain or the like, through the act of GOD, or through *ſome act of* the king's officers, without any fault on the part of the herdſman, ſhould be ſet free.

But "or" is ſupplied in the *Párijáta;* "or *thoſe* which are not attended by a keeper." In fact, it ſhould be aſſumed both ways; for they are *both* equally pertinent.

LIV.

MENU:—For damage done by a cow before ten days have paſſed ſince her calving, by bulls *kept for impregnation,* and by cattle conſecrated to the deity, whether attended or unattended, MENU has ordained no fine.

A cow within ten days after her calving, bulls diſmiſſed with

marks of the trident and diſcus*, cattle dedicated to the deity, whether attended or unattended, MENU has declared not finable when found grazing in corn. Since even conſecrated bulls are kept by herdſmen among cows for the ſake of impregnating them, it is poſſible that they may be attended by a keeper.

CULLÚCABHATTA.

"Bulls" kept for impregnation. The *Chintámeni*.

"Before ten days have paſſed ſince her calving;" the meaning is, if ten days have not elapſed ſince her calving.

LV.

NÁREDA: — A cow within ten days after her calving, a bull, horſes and elephants, ſhould be diligently kept off; their owner is not bameable *for their treſpaſſes*.

"Horſes and elephants," appropriated to the protection of the ſubject. The *Retnácara*.

LVI.

UŚANAS: — For elephants and horſes no fine *is allowed*, ſince they are conſidered as defences of the ſubject; nor for cattle blind of one eye or lame, nor for bulls marked *with the token of conſecration;*

2. Nor for *a* ſtray, nor for a cow which lately calved, nor for one which deſires the male; nor for cows, during jubilees, nor at the ſeaſon of obſequies.

"Lame;"

* The figure of a trident is ſtamped with a hot iron on the right ſhoulder, and a circle or diſcus on the left ham of the ſteer which is diſmiſſed with four heifers at obſequies and other occaſions of mourning: the ſame marks are made with ſanders wood, inſtead of being ſtamped with a hot iron, on a ſteer diſmiſſed at a marriage or other occaſion of rejoicing. The trident betokens the conſecration of the bull to RUDRA: it is not ſo obvious what is intended by the diſcus, which is the weapon of VISHNU; for it does not appear that the bull is conſecrated to this deity. T.

"Lame;" crippled. By the terms "blind of one eye or lame." is here denoted cattle very much disabled. "Bulls marked;" distinguished by the mark of a trident and the like. "Perverse" (*for* CHANDÉSWARA *reads* abhichárinì, *instead of* abhisárinì *concupiscent;*) one which bears excessive beating *without obeying its driver.* The *Retnácara.*

In the *Párijáta* it is read *abhisárinì*, and explained "one which desires the bull." "Horses," belonging to the king; for they are a defence to the subject. As for what is declared by GÓTOMA, "ten for a horse or a female buffalo" (XL), that concerns horses belonging to traders and the like: consequently there is no inconsistency.

In the *Chintámeni* the reading is, *vyabhichárinì;* it signifies one which is much disposed to run away *from its keeper.* The words "blind of one eye or lame," are *there* expounded as in the *Retnácara.*

"Nor for cows;" consequently, should some inconsiderable mischief be done by cattle belonging to owners wholly occupied in the celebration of a festival or the like, no fine *shall be exacted.* Thus other *lawyers explain the text.*

LVII.

SANC'HA and LIC'HITA:—Small cattle, and animals of general use, may not be driven away; *the owners of* mules, elephants, and horses, are exempt from fines; such beasts are ungovernable, and should be gently driven away.

"A mule," born of a mare by an ass. "Ungovernable;" beasts which cannot readily be driven away. The *Retnácara.*

"Small cattle;" calves, *or young cattle*, may not be driven away. "Animals of general use," such as cats and the like, occasion no amercement, even though they do mischief: those *animals* which are of general use, or which suit the purposes of all, should be maintained by all. "Mules, elephants, and horses," appropriated to the protection of the subject. Thus others *expound the law.*

But in the *Chintámeni* the reading is, "small cattle, and ungovernable mules, elephants, and horſes." "Ungovernable" is explained unmanageable.

The reading of the *Pracáśa* and *Párijáta* is *abadhya* (explained "not to be ſmitten"), inſtead of *avaśya*, ungovernable.

LVIII.

CÁTYÁYANA: — If cattle of the loweſt, higheſt, or middle ſorts be beaten, ſhould their owner ſue *the offender*, let the king adjudge a fine.

2. But VRÍHASPATI permits the ſeizure and chaſtiſement of beaſts which treſpaſs in fields, flower-gardens, reſerved paſtures, houſes, or ſtalls for cattle.

"Stalls, *or paddocks*;" places abounding in graſs. "Seizure;" binding *or tying*. CHANDÉSWARA.

There is no offence in beating or tying cattle which treſpaſs in a houſe or the like. VÁCHESPATI MISRA.

But the reading approved by him is *paśu rájiſhu*, among ſtrings of cattle, inſtead of *paśu vâſiſhu*, in ſtalls for cattle: and preſerved paſtures ſignify places abounding in graſs.

In the firſt text (LVIII 1), "*againſt the ſtriker*" muſt be ſupplied after the words "adjudge a fine:" and the *ſecond* text is recited by MISRA, with theſe words premiſed, "the Sage declares an exception to that rule." Thus, if he ſtrike cattle without a fault, the ſtriker ſhall be amerced; but not if the cattle treſpaſs in a field or the like. Such is his opinion.

But others hold, that ſtriking without provocation ſhould be conſidered under the title of Aſſault and Violence; under the preſent head, it is permitted to ſtrike cattle if they tranſgreſs: in that caſe, their owners, proſecuting the ſtriker, ſhall be amerced. The Sage propounds the tranſgreſſions in the ſecond verſe (LVIII 2).

In the *Retnácara*, "flower-gardens and reſerved paſtures," are explained

explained lands cultivated by a man himſelf for gardens or the like. Or "flower-gardens" may ſignify gardens in general; and "reſerved" ſpots, fields of pot-herbs or the like adjoining to the habitation.

LIX.

MENU:—Theſe rules let a juſt prince obſerve in all caſes of tranſgreſſion by maſters, their cattle, and their herdſmen.

Let a king, excelling in juſtice, obſerve theſe rules above declared, in caſes of tranſgreſſion by maſters and herdſmen not guarding *their cattle*, and in caſes of damage done to grain by cattle.

BOOK IV.

ON THE

DUTIES OF MAN AND WIFE.

CHAP. I.

ON THE

DUTIES OF A HUSBAND.

SECT. I.—*On the Necessity of guarding Women.*

IS it not impoſſible that there ſhould be ſuch a title of judicial procedure as the Duties of Man and Wife, ſince litigation is forbidden, in a controverſy between man and wife, by a text of civil law quoted in the *Mitácſharà* (Book III, Chapter I, v. X)? Of this queſtion CHANDÉSWARA gives a ſolution: 'Although a ſuit in the king's court, conducted by the wife and huſband as plaintiff and defendant, be forbidden, yet the king may be privately informed by either of them; and if they deviate from that conduct which is enjoined to them in regard to each other, they muſt be confined to their own ſole duty, by means of puniſhment and the like *denounced* by the king; elſe, *(if they perſiſt in miſconduct,)* they ſhall be chaſtiſed:' to intimate this, the duties of man and wife are propounded under a title of forenſick practice.

But

But the author of the *Mitâcſharâ* argues, from the law *which permits the huſband to appropriate the wealth of his wife in certain caſes* (Book I, v. CCXCI), that, ſhould he diſſipate the wealth of his wife in other circumſtances than *the preſſure of* famine and the like, and refuſe to repay it on demand, though he actually poſſeſs wealth, a ſuit between a married couple is in that caſe admiſſible. *But* the litigation of teachers, huſbands, and the reſt, is not laudable, either in a moral or a civil view; therefore pupils, wives and the reſt, ſhould, in the firſt inſtance, be diſcouraged by the king or the court: ſuch is the implied ſenſe of the verſe (Book III, Chapter I, v. X). But, in very important caſes, even the ſuits of pupils and the reſt may be entertained in the form mentioned.

But others hold, that this verſe (Book III, Chapter I, v. X) only prevents the recourſe of huſbands and the reſt to the king's court; for it is declared (Book III, Chapter I. v. XI), that wives and the reſt, committing faults, may be corrected by their huſbands and ſo forth: but if huſbands and the reſt tranſgreſs, there is no redreſs without application to the king. In this text (Book III, Chapter I, v. X) the meaning is, "mutual litigation;" and thus the independence of wives is incidentally forbidden, to eſtabliſh that law concerning man and wife, and to denounce puniſhment for a woman aſſerting independence.

I.

VRÍHASPATI:—This law concerning adultery has been declared; next hear the whole rule of conduct for man and wife, as propounded by me.

"Adultery;" corrupting the wife of another. "The whole rule; &c.:" hear the collection of *rules for* the mode of conduct and behaviour of man and wife towards each other.

II.

MENU:—I now will propound the immemorial duties of man and woman, who muſt both remain

firm

firm in the legal path, whether united or ſeparated.

I will declare the preſcriptive duties of man and woman, perſevering, whether united or ſeparated, in the path of duty enjoined *by the law*; namely, the mutual fidelity of man and wife. If the mutual duty of huſband and wife be violated by one forſaking the other, the tranſgreſſor ſhall be confined to his duty even by penalties impoſed by the king; therefore it is mentioned among *ſubjects of* judicial procedure. CULLÚCABHATTA.

"Immemorial;" the term is explained, in the *Retnácara*, indiſpenſable. "United," by dwelling in the ſame houſe or the like: "ſeparated," by reſiding abroad and ſo forth. But YÁJNYAWALCYA does not mention the duties of man and wife among forenſick matters.

MENU declares the duties of man and woman.

III.

MENU: — Day and night muſt women be held by their protectors in a ſtate of dependence; *even* in *lawful and innocent* recreations, being too much addicted to them, they muſt be kept *by their protectors* under their own dominion.

Women muſt be ever held in ſubjection by their huſbands or protectors; even in reſpect of unforbidden recreations, ſuch as matters of beauty and taſte, (being *too much* addicted to them,) they muſt be reduced under their *protectors'* own dominion. CULLÚCABHATTA.

Conſequently they ſhould not even view paintings, eat mixed food, or wear jewels or the like, without the permiſſion of their huſbands or other protectors *. If they were in a ſtate of independence, what harm would enſue? NÁREDA declares *the conſequence*.

IV.

* The inference, drawn by the compiler, obliges me to alter the verſion of this text. The paſſage itſelf, and the gloſs of CULLÚCABHATTA, would bear the conſtruction which Sir W. JONES had put on it. (Chapter IX, v. 2.)

IV.

NÁREDA:—Through independence, even women born of noble families would ſwerve from their duty; hence the lord of created beings has eſtabliſh their *perpetual* dependence.

"*Noble* families;" honourable families. The *Retnácará*. "They would ſwerve from their duty;" *literally*, they are utterly loſt: they are guilty of diſloyalty and other offences; thus, becauſe they know not what is legal and illegal for thoſe who live exactly according to ſacred ordinances, (ſince they are not qualified to ſtudy ſacred literature;) and becauſe they cannot be inſtructed, (ſince they are not in a ſtate of ſubjection to their huſbands, while they aſſert their own independence;) they would violate the duties of their claſs and the like for the temporal gratification of enjoying *the ſociety of* ſtrangers, and be perpetually occupied in viewing paintings and the like. Again; if they diſpute the authority of their protectors, and covet independence, they ſhall be compelled by the king, when informed of their miſconduct, to abide by their duty.

MENU ſpecifies thoſe who are meant by the term "protectors," or huſbands and the reſt.

V.

MENU:—Their fathers protect them in childhood; their huſbands protect them in youth; their ſons protect them in age: a woman is never fit for independence.

Let her father guard a woman, before her nuptials; afterwards let her huſband guard her; and, on failure of him, let her ſon protect her: therefore a woman ſhares not independence at any period whatſoever. "Their huſbands protect them in youth;" this is indefinite, for ſons and others alſo protect *young* widows remaining with their children. CULLÚCABHATTA.

VI.

VI.

YÁJNYAWALCYA, in the firſt chapter of his code:— Let her father guard a maiden; let her huſband guard a married woman; but let her ſon guard her in age: or, on failure of theſe, let their kinſmen protect her. In no inſtance is the independence of a woman *allowed*.

"Married;" wedded. "Their kinſmen;" relations of the ſons. The *Chintámeni* and *Retnácará*. — Before her hand be taken *in marriage*, let her father preſerve her from improper conduct; after that, let her huſband guard her; and after his death, *let* her ſons guard her in old age: on failure of thoſe who have been mentioned, the kinſmen *protect her*; or if there be none, the king (VII): therefore, "in no inſtance is the independence of women allowed."

VIJNYÁNÉSWARA and 'SÚLAPÁNI.

VII.

Uncertain:* — But, on failure of *kindred on* both ſides, the king is the ruler and protector of a woman.

VIII.

HÁRÍTA: — By violating their *obligation of* fidelity to one only *huſband*, and by receiving the embraces of a ſtranger, vicious women confound families; *for*, a ſon begotten by an adulterer while the huſband is alive is a *cunda*, or, after his death, a *gólaca*: therefore let the huſband guard his wife from the aſſaults of luſt. If ſhe be loſt *through vice*, the *honour of the* family is forfeited; if that be

* The fragment varies little from a verſe ſubſequently cited (XIII 3). T.

be loſt, the *pure ſucceſſion of* progeny is loſt: through that loſs, the ſacraments of deities and of manes are deſtroyed; thoſe ſacraments being deſtroyed, duty fails; duty failing, *the huſband's* ſoul is loſt; and his ſoul being loſt, every thing is loſt.

" Their obligation of fidelity to one only huſband;" the rule or religious obligation of *fidelity to* one only huſband. " By violating that;" by failing therein, they confound " families" or houſes. " Progeny;" ſons, grandſons, and other offspring.

The *Retnâcara.*

By receiving the embraces of a ſtranger, women becoming vicious, confound and mingle families and races; for they introduce the offspring of one man into the family of another. " If the wife be loſt," (if ſhe be guilty of violating her duty,) the paſt generations, father, grandfather and ſo forth, are defiled; and thence future ſucceſſive generations of ſons and ſo forth are defiled. By this defilement of progeny, rites *in honour* of deities and other *religious ceremonies*, are polluted: hence duty is not fulfilled; and the ſoul, therefore, ſinks to a region of torment. Or elſe, through failure of progeny, the merit of rites performed by a ſon is not obtained, ſince the man himſelf has no male iſſue: and hence, the purpoſe of human life is unattained by him; for all the purpoſes of human life *(wealth, virtue, love of* God, *and final beatitude)* depend *for their accompliſhment* on the merit of duty *obſerved.* Thus others explain the text.

IX.

MENU:—Women muſt, above all, be reſtrained from the ſmalleſt illicit gratification; for, not being thus reſtrained, they bring ſorrow on both families:
2. Let huſbands conſider this as the ſupreme law, ordained for all claſſes; and let them, how weak ſoever, diligently keep their wives under lawful reſtrictions:

3. For

3. For he who preſerves his wife *from vice*, preſerves his offſpring *from ſuſpicion of baſtardy*, his ancient uſages *from neglect*, his family *from diſgrace*, himſelf *from anguiſh*, and his duty *from violation*.

Women ſhould, eſpecially, be reſtrained from the ſmalleſt illicit gratifications, which produce any evil conſequences: much more ſhould they be reſtrained from the greateſt; for, by neglect of reſtraint, both the families of their huſbands and fathers experience ſorrow. CULLÚCABHATTA.

The ſorrow, *brought on both families*, has been deſcribed by HÁRÍTA (VIII); ſhame and diſgrace *are alſo brought on them*.

Therefore let huſbands know this rule for guarding wives, in the mode deſcribed by a ſubſequent verſe, to be the firſt of all duties incumbent on men of all claſſes, as well *Brâhmanas* as others: and let even the blind and the lame be diligent in reſtraining their wives. CULLÚCABHATTA.

"How weak ſoever:" by this it is intimated, that it is *alſo* neceſſary for thoſe who are ſtrong. "Huſbands," or protectors, being expreſſed in the plural number, comprehend fathers and other protectors above mentioned (V).

Thus, becauſe he who guards his wife, preſerves his offſpring, ſince unmixed and undefiled progeny is obtained; and ſince he preſerves approved ancient uſages, the honour of his father, grandfather, and the reſt of his anceſtry, himſelf, as the parent of pure offſpring, and his duty by means of obſequies performed for him by ſuch offſpring; (for *all* theſe are effected through the purity of his wife:) therefore let him be diligent in guarding her. This may be ſupplied, from what had preceded. CULLÚCABHATTA.

Thus, the very ſame is ſaid by MENU, which has been delivered by HÁRÍTA.

After mentioning mixed claſſes, PAIT'HÍNASI thus proceeds:

X.

PAIT'HÍNASI:—Therefore guard wives, leſt mixed claſſes ſhould ſpring from them.

Vigilantly

Vigilantly careful leſt mixed claſſes ſhould ſpring from their wives, let huſbands *therefore* guard them.

XI.

*Smŕiti**, quoted in the *Retnácara*:—Cautious men! guard your offspring, and do not ſuffer the ſeed of a ſtranger to be ſown in your field: men guard, from the embraces of another, a wife *whom they have married while a* virgin.

This obviates *ſuch* a reflection as the following: "they will guard themſelves; why ſhould I *be* diligently *watchful?*"

XII.

VRĬHASPATI:—A woman muſt be carefully reſtrained from the ſmalleſt illicit gratification; night and day ſhe ſhould be guarded by her mother-in-law, and by other venerable matrons.

This indicates the ſubjection of women to their huſband's mother and the reſt.

XIII.

NÁREDA: — After the death of her huſband, *the neareſt kinſman on* his ſide has authority over a woman who has no ſon; in regard to the expenditure of wealth, the government of herſelf†, and her maintenance, he has full dominion.

2. If the huſband's family be extinct, or the kinſmen be unmanly, or deſtitute of means to ſupport her,

or

* Quoted from ÁPASTAMBA. See Book V, v. CCLI.

† The preſervation of wealth: a various reading in Book V, Chap. VIII.

or if there be no *ſapindas*, a kinſman on the father's ſide ſhall have authority over the woman:

3. But if the kindred on both ſides fail, the king is conſidered as the protector of the woman; he ſhall guard her, and ſhall chaſtiſe her if led away from the path *of virtue*.

"Kinſman on the huſband's ſide;" of his father's or mother's race, in the order of proximity. "Expenditure of wealth;" gift or other alienation of property. "Government of herſelf;" reſtraint from illicit gratifications. "Maintenance;" means of ſubſiſtence. Thus, without his conſent, ſhe may not give away any thing to any perſon; nor indulge herſelf in matters of ſhape, taſte, ſmell or the like: and if the means of ſubſiſtence be wanting, he muſt provide her maintenance. But if the kinſman be "unmanly," (deficient in manly capacity to diſcriminate right from wrong;) or "deſtitute of means to ſupport her," (if there be no ſuch perſon able to provide the means of ſubſiſtence;) or if there be no *ſapindas*: then, any-how determining, from her own judgment, on the means of preſerving life and duty, let her announce her affinity in this mode, "I am the wife of ſuch a man's uncle;" and if that be ineffectual, let her recur to her father's kindred: or, on failure of theſe, recourſe may be had even to her mother's kindred; but, on failure of theſe, "the king ſhall chaſtiſe her, if led away from the path *of virtue*." Conſequently, the king has no right to chaſtiſe her in the firſt inſtance; but if ſhe deſert her huſband, or other protector, he is competent to re-eſtabliſh her guardian's authority; and he ſhall not impoſe a fine on account of her deviation from the path of virtue, but on account of her deſerting her protector. Again; the maintenance of a woman who has no kindred muſt be aſſigned by the king. Thus ſome explain the law.

XIV.

MENU:—Reprehenſible is the father who gives not *his daughter in marriage* at the proper time, and

the huſband who approaches not *his wife* in due ſeaſon; reprehenſible alſo is the ſon who protects not his mother, after the death of her lord.

A father, not giving his daughter *in marriage* at the proper time for diſpoſing of her in wedlock, is culpable: ſince a text ordains that a damſel ſhould be given in marriage before her courſes, the proper time for diſpoſing of her in wedlock precedes her puberty. A huſband, not approaching his wife in due ſeaſon, is culpable: and a ſon, not protecting his mother after the death of her lord, is deſpicable. CULLÚCABHATTA.

A father not giving *his daughter in marriage*, and a huſband not approaching *his wife in due ſeaſon*, are both culpable in regard to thoſe women; ſince the natural paſſion, implanted *in the human race* by the divinity, is not to be endured. Hence theſe perſons ſhould be puniſhed as offenders: but the woman is not juſtified in miſconduct; for no law permits it. Thus others *comment on the text*.

XV.

VRÍHASPATI:—The father who gives not *his daughter in marriage* at the proper ſeaſon, the huſband who approaches not *his wife* in due ſeaſon, and the ſon who gives not ſupport to his mother, are criminal, and ſhall be puniſhed according to the law.

If a huſband approach his wife in due ſeaſon, her deſire of another man, from a wiſh to bear iſſue, is obviated; but if her paſſions be vehement, ſhe ſhould be approached by her huſband at other unforbidden times.

"And the ſon who gives not ſupport to his mother;" from the word "and" it alſo appears indiſpenſable that the father or huſband ſhould give a maintenance to a daughter or wife. Thus ſome expound the law.

XVI.

XVI.

VAŚISHT'HA:—As often as a virgin's courſes recur, who deſires and demands marriage with a man of equal claſs, ſo many beings are deſtroyed by the fault of her father and mother: thus is the law declared.

XVII.

PAIṬ'HÍNASI:—Before her breaſts are prominent, a girl ſhould be given in marriage: both he who gives *a damſel in marriage* after *her* menſes have appeared, and he who receives *ſuch a damſel*, ſink to a region of torment; and the father, paternal grandfather, and great-grandfather of *each* are born again in ordure: therefore ſhould a damſel be given *in marriage* before her menſes appear.

If her father be dead, it ſhould be underſtood that the ſucceſſor to his wealth, or other competent perſon, *muſt give her in marriage*.

XVIII.

YÁJNYAWALCYA:—If there be no perſons *competent* to give her in marriage, let the damſel herſelf chooſe a ſuitable bridegroom.

XIX.

MENU:—The huſband, after conception by his wife, becomes himſelf an embryo, and is born a ſecond time here below; for which reaſon the wife is called *jáyá*, ſince by her *(jáyaté)* he is born again.

The huſband, impregnating his wife, aſſumes the ſtate of an embryo, and is born again of her in the perſon of his ſon; that is the very reaſon for calling a wife *jáyá*, ſince by her he is born again. CULLÚCABHATTA.

The meaning is, that the word is formed with a termination in the ſenſe of containing; "ſhe in whom he is again generated."

What is deduced from this? The Sage declares *the inference*.

XX.

MENU:—Now the wife brings forth a ſon endued with ſimilar qualities to thoſe of the father; ſo that, with a view to an excellent offſpring, he muſt vigilantly guard his wife.

Becauſe it is declared by the law, that ſhe produces a ſon ſimilar to the father, whether legitimate or illegitimate, (an excellent ſon, if ſhe ſubmitted to an excellent man; and a bad ſon, if ſhe ſubmitted to a vicious man;) therefore, with a view to excellent offſpring, he muſt vigilantly guard his wife.

CULLÚCABHATTA.

Thus the expreſſions of MENU and HÁRÍTA were ſuitable: "he preſerves his offſpring *from ſuſpicion of baſtardy*" (IX 3); and, "*the pure ſucceſſion of* progeny is loſt *by her miſconduct*" (VIII). And the inferible ſenſe is, that a wife ſhould be guarded with a view to excellent offſpring.

XXI.

SANC'HA and LIC'HITA:—Women bring forth ſons endued with ſimilar qualities to thoſe of the man on whom their thoughts are fixed in the ſeaſon of paſſion; as a black calf ſprings from a black bull, and a white calf from a white bull. But the influence of the female is great, ſince mixed claſſes *thence* originate.

"Thence"

"Thence" *(from females)* muſt be ſupplied.

The *Retnácara.*

"The influence of the female is great;" the influence of the wife is greater than that of the huſband. Thus, although the huſband be endued with excellent qualities, the offſpring may be vitiated through the faults of the wife.

XXII.

MENU:—Such *women* examine not beauty, nor pay attention to age, whether *their lover be* handſome or ugly; they think it is enough that he is a man, and purſue their pleaſures.

2. Through their paſſion for men, their mutable temper, their want of ſettled affection, and their perverſe nature, (let them be guarded in this world ever ſo well,) they ſoon become alienated from their huſbands.

They do not examine deſirable figure; nor regard youth or age: but, whether a man be handſome or ugly, they think his manhood ſufficient, and receive his embraces. Since, at ſight of a man, they deſire fruition, ſince their temper is not conſtant, and ſince they are naturally void of ſettled affection, however diligently guarded in this world, they ſoon become alienated from their huſbands, leaning to diſloyalty. CULLÚCABHATTA.

No man ſhould be confident, that, on account of his youth and beauty, a woman will not recur to any other man, old or ugly. A woman has no ſettled tenderneſs, even for her family and the like. The cauſe is mentioned: her temper is naturally mutable; and, through want of ſettled affection for her huſband, ſhe fails in the ſubmiſſion due to him.

XXIII.

MENU:—Yet ſhould their huſbands be diligently

careful in guarding them; well knowing the diſpoſition with which the lord of creation formed them.

Knowing the diſpoſition implanted in them when the univerſe was framed by the creator, and which diſpoſition is deſcribed in the two preceding verſes (XXII), let their huſbands *therefore* apply the utmoſt attention to guard them. CULLÚCABHATTA.

Diſloyal paſſion is natural to them, and ſprings not, *in particular inſtances*, from *peculiar* defects: and this fault *in their diſpoſitions* ſhould not be imputed to them; it is derived from nature, and therefore they ſhould not be contemned merely for their mutable temper.

XXIV.

MENU:—MENU allotted to ſuch women a love of their bed, of their ſeat, and of ornament, impure appetites, wrath, weak flexibility, deſire of miſchief, and bad conduct.

MENU allotted to women, at their firſt creation, a propenſity to their bed, to their ſeat, and to ornaments, impure appetites, wrath, weak flexibility, miſchievous inclinations, and ill behaviour; therefore they muſt be diligently guarded.

CULLÚCABHATTA.

The *term explained* "weak flexibility," *may ſignify* crooked proceeding, *or fraud*. Thus MENU declares their defects natural.

XXV.

MENU:—Women have no buſineſs with the texts of the *Véda;* thus is the law fully ſettled: having, therefore, no evidence *of law*, and no *knowledge of expiatory* texts, ſinful women muſt be *as foul as* falſehood itſelf; and this is a fixed rule.

None

None of the ceremonies at the birth of children, and ſo forth, are performed for females with holy texts. This limitation of the law is fully ſettled. Hence, through the want of ſolemn rites accompanied with holy texts, they are not deveſted of ſin ; through the want of evidence of law and ſcripture, they are not acquainted with the ſyſtem of duties ; and having no expiatory texts, *(that is*, being incapable of expiating a ſin actually committed, ſince they are debarred from the ſilent repetition of expiatory texts ;) women are as foul as falſehood *itſelf*. Such is the reſtriction of the law. Therefore a woman ſhould be vigilantly guarded : this is implied in the text. CULLÚCABHATTA.

" Having no evidence of law ;" wanting that evidence which induces ſteadineſs in engagements and the like. " Falſehood :" their conduct is tainted with falſehood. The *Retnácara*.

The text ſhows *a* further *cauſe of the* evil *diſpoſition* of women naturally ill diſpoſed : at their birth and ſo forth, rites are not celebrated with holy texts ; hence they are not ſanctified. " Having no evidence *of law ;*" or, otherwiſe interpreted, having no organs of ſenſe *(nirindriyàh)* : by this it is intimated that they have no knowledge of what is lawful and unlawful, although they have viſual, mental and other faculties. " And no texts :" by this is denoted their excluſion from the ſtudy of the *Vêdas*. From this cauſe, though *phyſically* exiſtent, they are *morally* non-exiſtent or falſe beings. It follows, that women ſhould be avoided, ſince they are thus vile : and it is ſhown, that they cannot, of themſelves, preſerve virtue, or expiate ſins. Thus others expound the text.

XXVI.

MENU :—To this effect many texts, which may ſhow their true diſpoſition, are chanted in the *Vêdas* : hear now their expiation for ſins.

It has been ſaid, that an inclination to diſloyalty is natural to women ; on this point, he cites the authority of the *Vêda* : many revealed texts, which ſhow the true diſpoſition of women, and their diſloyal propenſity, are read in the *Vêdas* ; hear ſuch of thoſe texts as are ſolemn expiations for diſloyalty. Since only one

text is quoted *, the meaning is, "hear the text:" and the plural number is uſed for the ſingular, under the general rule; "any inflection ſupplies the place of another *in the ſcriptures and in the works of Sages.* CULLÚCA BHATTA.

"Texts;" paſſages of holy writ. "The *Vēdas;*" the ſcriptures. "Their true diſpoſition;" their natural temper. Of thoſe texts of the *Vēda*, hear that which is an effectual expiation for mental diſloyalty; that you may know the true diſpoſition of women. The text ſhould be ſo ſupplied. The *Retnācara.*

XXVII.

DACSHA:—Like a leech, all women, though won by ornaments, apparel, and furniture, ever exhauſt their huſbands.

2. Yet a leech ſucks a man's blood alone, and *ſo far* is *more* reſpectful; but the other draws wealth, gain, fleſh, ſeminal juices, ſtrength, and pleaſure.

3. In infancy ſhe is timid, in youth confident; but in age a woman ſhows *outward* reſpect to her huſband, as *if he were* a king.

4. Left to the guidance of her own will, and unreſtrained by affection, ſhe afterwards becomes ungovernable, as a neglected diſeaſe *becomes incurable.*

"Her own will;" her own deſires. "Ungovernable;" highly miſchievous. The *Retnācara.*

Though won by ornaments, apparel and furniture, ſhe exhauſts her huſband, as a leech ſucks the human body. Therefore, as a leech, ſteadily adhering to the body of a man, ſucks and drinks his beſt blood, ſo do women act. He adds to the illuſtration: ſince a leech ſucks the blood alone, it is reſpectful in compariſon with women; but theſe draw wealth, and the reſt of ſix things mentioned.

In infancy ſhe is fearful; in youth ſhe aſſerts equality; in age ſhe

* Chap. IX. v. 20.

ſhe reſpects her huſband no more than graſs, for *his* youth is paſt. On the other reading *(nṛĭpa vat* like a king, inſtead of *tṛĭna vat* like graſs,) the ſenſe is this; that ſhe herſelf may be eſteemed even without youth *to render her amiable*, ſhe honours her huſband, like a king, with affected reſpect.

Conducting herſelf according to her own will, and unreſtrained by the apprehenſion of violating affection, a woman deviates from the path of duty, (ſhe follows not that which is ordained to be the path of virtue;) as a diſeaſe, ſuch as a fever or the like, ſuffered to remain in the body, and, through tenderneſs, unoppoſed by a cooling regimen, becomes incurable through the want of medicaments.

XXVIII.

The *Rámáyana*:—To women, not any man is *ſolely* dear, nor is any one hateful; they embrace every man, as a creeper, growing in the foreſt, *clings to every tree within its reach.*

Therefore, it ſhould not be truſted that there is no apprehenſion of a woman's deſiring ſome man who is *apparently* hateful to her. She muſt be guarded from all.

XXIX.

The *Mahábhárata*:—Women, though born in noble families, *themſelves* beauteous, and married *to worthy huſbands*, remain not within the bounds of duty; this, NAREDA, is the fault of women:

2. From the want of a motive *for deviation*, or through fear of the people or of their kindred, unbridled women may remain within the bounds of duty, *faithful* to their huſbands;

3. But neither through fear *of moral law*, nor through ſevere reprehenſion, nor from any motive of *regard*

for

for wealth, nor on account of their connexion with kindred and family, are women conſtant to their huſbands.

4. Matrons envy women who live by proſtitution, the *bloom of* youth they poſſeſs, and the food and apparel they receive.

5. Though men be lame, divine Sage! or otherwiſe contemptible, there is not any man in this world, great Sage! inſufferable to women:

6. If they have no poſſible acceſs to men, *O thou inſpired by* BRAHMA! they ſeduce each other; truly they are not conſtant to their huſbands:

7. From not finding men, or through fear of their kindred, or apprehenſion of ſtripes or confinement, they guard themſelves:

8. But fire is not ſatiated with wood, nor the ocean with rivers, nor death with all beings, nor woman with man.

9. This, divine Sage! is another hidden quality of all women; at the very ſight of a handſome man, the heart of a woman melts with deſire.

10. Women bear not much *affection to* their huſbands, though giving them what they deſire, doing what they wiſh, and protecting them from danger:

11. They do not ſo much value the gratification of their wiſhes, abundance of ornaments, or hoards *of wealth*, as they do ſenſual pleaſures.

12. Final deſtiny, wind, death, the infernal regions, the fire of the ocean, the edge of a razor, poiſon, venomous ſerpents and *devouring* fire, all united, are *no worſe than* women *.

In

* I think it unneceſſary to ſubjoin the comments to theſe texts, on which it is unpleaſant

In fact, all these texts, describing the wickedness of women, only imply that confidence should not be placed in them, and show that they are sinful from their want of knowledge to distinguish what is lawful and unlawful. But, at particular times, men also follow implicitly the dictates of lust. Accordingly the *Mahábhárata* expresses, "all creatures, overcome by lust and wrath, sink, &c.;" and, at times, women are found most loyal and constant, as SÁVITRI and others.

SECT. II.—*On the Method of guarding Women.*

IF, *then*, women regard not their protectors, how can they be preserved from vice? In answer to this question, MENU declares the expedients by which they may be guarded.

CHANDÉSWARA.

XXX.

MENU: — No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

2. Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and *female* duty, in the preparation of daily food, and the superintendence of household utensils.

"Household utensils;" *or it may mean female ornaments*, as bracelets, ear-rings, and the like.

No man is able *wholly* to preserve women from vice, even by forcible restraint; for still they will manifest disloyalty. But, by these

unpleasant to dwell: the subsequent remark does away the literal application, as the texts quoted in the next section (particularly V. xciv) do away the universal censure. T.

theſe means, he may reſtrain them. The Sage mentions thoſe means (XXX 2): by keeping a wife employed in the accumulation and diſpoſal of wealth, in the purification of effects and of *her own* perſon, in the care of the *ſacrificial* fire and the like, in the preparation of food, and in the ſuperintendence of houſehold utenſils, as beds, ſeats, jars, earthen veſſels, and the like.

CULLÚCABHATTA.

Others explain "purification and *female* duty," ſweeping the houſe and cleaning the veſſels uſed at meals and the like. "Preparation of food;" and the preſenting of it, and ſo forth. Occupied in ſuch offices, their minds are calm; hence, and from want of leiſure, every wiſh for commerce with other men is prevented. This artifice MENU declares to be an expedient for reſtraining women.

XXXI.

VRÍHASPATI:—The keeping women employed in the receipt and expenditure of wealth, in the preparation of food, in the ſuperintendence of the houſehold utenſils, in purification, and in the care of the *perpetual* fire, is declared to be the mode of reſtraining women.

"In purification;" or in the buſineſs of cleanlineſs, as ſweeping the houſe and the like. "In the care of the fire;" in keeping it for the daily oblations of thoſe who maintain a perpetual fire.

XXXII.

MENU:—By confinement at home, even under affectionate and obſervant guardians, they are not ſecure; but thoſe women are truly ſecure, who are guarded by their own good inclinations.

Guardians, who are both affectionate and obſervant.

Though confined at home, even under perſons who are both affectionate and authoritative, thoſe women are not ſecure, who, from their evil diſpoſition, guard not themſelves; but they who, excelling in virtue, guard themſelves, are truly ſecure. Therefore a rule *of conduct* ſhould be preſcribed to them by announcing the attainment of heaven through the practice of virtue, and puniſhment in hell for habits of vice. This is declared to be the chief expedient for reſtraining women. CULLÚCABHATTA.

XXXIII.

MENU:—Whatever be the qualities of the man with whom a woman is united by lawful marriage, ſuch qualities even ſhe aſſumes; like a river *united* with the ſea.

2. ACSHAMÁLÁ, a woman of the loweſt birth, being thus united to VASISHT'HA, and 'SÁRANGÌ, being united to MANDAPÁLA, were entitled to very high honour:

3. Theſe, and other females of low birth, have attained eminence in this world by the reſpective good qualities of their lords.

A woman, though *naturally* ſinful, imbibes virtue from her intercourſe with a huſband who gives the example of it, and ſhe becomes deſerving of reſpect; but a woman, even though naturally virtuous, becomes vicious by intercourſe with a vicious man. He illuſtrates this by a compariſon; as ſweet water, falling into the ocean of ſalt water, becomes ſalt, or falling into the ocean of milk, *becomes milk*, and ſo forth. ACSHAMÁLÁ (XXXIII 2) was the name of a certain woman married to VASISHT'HA; and 'SÁRANGÌ was a female bird, married to a Sage named MANDAPÁLA.

"Theſe, and other females;" *in the plural number inſtead of the dual:* on this CULLÚCABHATTA obſerves, that, although two only are here celebrated, "theſe" is expreſſed in the plural number, becauſe thoſe two are only intended as inſtances. Others think,

think, it is expreſſed in the plural to convey the ſenſe of "and the reſt;" the meaning therefore is, "theſe two and the reſt, as well as other females."

XXXIV.

MENU:—Thus has the law, ever pure, been propounded for the civil conduct of men and women: hear next the laws concerning children, by obedience to which may happineſs be attained in this and the future life.

"Civil conduct of men and women;" the protection to be given by a man to a woman: or the conduct to be obſerved in this world; that is, the protection afforded by men to women. Happineſs may be attained after death, ſince heaven is attained; and in this life, by the *very* preſervation *of a wife*, and ſo forth.

If women be naturally vicious, and be guarded with *ſuch* difficulty, ſhould not marriage be avoided? To obviate this doubt, he declares the production of children to be the motive of marriage.

XXXV.

MENU:—When good women, united with huſbands in expectation of progeny, eminently fortunate and worthy of reverence, irradiate the houſes of their lords, between them and goddeſſes of abundance there is no diverſity whatever.

2. The production of children, the nurture of them when produced, and the daily ſuperintendence of domeſtick affairs, are peculiar to the wife.

3. From the wife alone proceed offſpring, good houſehold management, ſolicitous attention, moſt exquiſite careſſes, and that heavenly beatitude which ſhe obtains for the manes of anceſtors, and for *the huſband* himſelf.

Although

Although their defects have been declared for the ſake of *ſhowing the neceſſity of* their being guarded; yet, as a remedy is poſſible, theſe women, married for the ſake of producing children (who are greatly beneficial *to their parents)*, become the cauſe of their huſband's partaking of eminent proſperity, are entitled to reverence ſhown by gifts of apparel, ornaments and the like, and render their own houſes pure. In ſuch houſes, women and goddeſſes of abundance are equal; there is no diverſity whatever: as a houſe, unviſited by the goddeſs of abundance, does not flouriſh; ſo a houſe, deprived of women, thrives not.

CULLÚCABHATTA.

"Goddeſs of abundance;" the term may ſignify either beauty, or the goddeſs LACSHMÌ. The production of children, and the purification of the houſe, are not the only purpoſes of marriage: the Sage mentions others (XXXV 2).

The conſtruction is this; "the daily buſineſs of civil conduct is peculiar to women." The *Retnácara.*

The production of children, the nurture of them when born, and the daily ſuperintendence of wordly affairs, (ſuch as the entertainment of gueſts, kinſmen and friends,) are peculiar to women. CULLÚCABHATTA.

The Sage enumerates the ſeveral qualities of women, both thoſe already noticed, and thoſe which had not been mentioned (XXXV 3).

The production of children, though already mentioned, is repeated, to ſhow that women are worthy of reverence; *that*, and offices in which religious duty is concerned, (as the care of the perpetual fire and the like,) ſolicitous attention, *(perſonal* attendance,) exquiſite careſſes, and heaven obtained for his anceſtors and himſelf by the production of children; all theſe proceed from the wife. CULLÚCABHATTA.

But we thus explain the text; offſpring, the nurture of children, and exquiſite careſſes, *proceed from the wife;* as mentioned in the *Cálicá purána*,

"The wife affords delight and male offſpring."

From her proceeds heavenly beatitude, obtained through the rites to be performed in the order of a houſeholder; there is not, conſequently,

ſequently, any needleſs repetition. Thus a text of law, quoted in the

Udváha tatwa, expreſſes:—"The wife call not the habitation *alone* the home, *for* the wife is deſcribed by that name *(grïha)*; with her, indeed, a man attains all the purpoſes of human life."

And another text, inſerted in the ſame compilation, declares incapable of ſacrifice, a man who has no wife, and has not paſſed the age of forty-eight years:

"Until he have attained the age of forty-eight years, a man who has neither ſon nor wife is diſqualified for performing the ſacrifice."

XXXVI.

YÁJNYAWALCYA:—Perpetuated offſpring and a heavenly abode are obtained through a ſon, a grandſon, and a great-grandſon; therefore ſhould virtuous wives be reſpected, cheriſhed, and well guarded.

XXXVII.

The *Mahábhárata*:—Theſe women, *graced* with the name of goddeſſes of abundance, ſhould be treated with honour by him who deſires wealth: BHARATA! a lovely woman, reſtrained from vice, is a goddeſs of abundance.

MENU declares them "worthy of reverence;" the *Mahábhárata* declares, they "ſhould be treated with honour;" and ſubjoins a motive for treating them with reverence:

XXXVIII.

XXXVIII.

The *Mahábhárata*:—Where females are honoured, there the deities are pleaſed; but where they are unhonoured, there all religious acts become fruitleſs.

2. When female relations are made miſerable, even then is that family annihilated; *for*, the houſes on which they pronounce a curſe *periſh*, as if deſtroyed by a deadly ſacrifice:

3. *Thoſe houſes*, king of the earth! neither flouriſh nor increaſe, which are not graced by the goddeſs of abundance.

"Female relations;" ſiſters, and women of a family.

AMERA.

The meaning is, that houſes on which female relations pronounce a curſe, (on which they pronounce an imprecation in conſequence of ſuffering from the want of a ſuitable maintenance and the like,) are extirpated.

XXXIX.

MENU:—Where females are honoured, there the deities are pleaſed; but where they are diſhonoured, there all religious acts become fruitleſs.

2. Where female relations are made miſerable, the family of him who makes them ſo very ſoon wholly periſhes; but where they are not unhappy, the family always increaſes.

3. On whatever houſes the women of a family, not being duly honoured, pronounce an imprecation, thoſe houſes, with all that belong to them, utterly periſh, as if deſtroyed by a ſacrifice for the death of an enemy.

4. Let thoſe women, therefore, be continually ſupplied with ornaments, apparel, and food, at feſtivals and at jubilees, by men deſirous of wealth.

"Female relations;" the women of a family, as ſiſter, ſon's or nephew's wife, and the reſt. The *Retnácara*. "Are made miſerable;" are made wretched, from the want of maintenance or the like. "Periſh, as if deſtroyed by a ſacrifice;" by a fire *lighted for a ſacrifice to be made* for the death of an enemy: a rhetorical ſimile.

XL.

MENU: — In whatever family the huſband is contented with his wife, and the wife with her huſband, in that houſe will fortune be aſſuredly permanent*.

XLI.

The *Mahábhárata*:—*Women* muſt be honoured and adorned by their own fathers and brethren, and by the fathers and brethren of their huſbands, if they ſeek abundant proſperity.

XLII.

MENU: — *Married women* muſt be honoured and adorned by their fathers and brethren, by their huſbands, and by the brethren of their huſbands, if they ſeek abundant proſperity.

XLIII.

YÁJNYAWALCYA:—Females muſt be honoured by their

* Cited again at V. clxxxix, 1.

their huſbands, brothers, fathers, and paternal kinſmen; by the fathers, mothers, and brethren of their huſbands; and by *all* kinſmen; with *gifts of* ornaments, apparel, and food.

Gifts of ornaments and the reſt, as *tokens of* reverence.

The *Dipacalicá*.

To the virtuous women, already deſcribed, muſt reverence be ſhown by their huſbands and the reſt, with ornaments, apparel, food, bloſſoms, and the like, to the utmoſt of their power, that, being honoured, they may advance the virtue, wealth, and pleaſures *of their kindred*. The *Mitácſharà*.

"Bloſſoms;" to be placed in the treſſes of their hair.

In the third chapter of his work, on the ſubject of an Embryo in the third month of pregnancy, YÁJNYAWALCYA has the following text:

XLIV.

YÁJNYAWALCYA:—By not gratifying the longings *of a pregnant woman*, the embryo ſuffers injury, becomes deformed, or even periſhes; therefore ſhould women be treated with affection.

From what has been ſtated, it appears that reverence muſt neceſſarily be ſhown to a wife, ſiſter, and the reſt, by gifts of food and clothes, and of ornaments, beſtowed according to his ability by her huſband, her brother, or ſome wealthy relation, as the caſe may be: this is a ſettled rule. If it be not done, the omiſſion is puniſhed with misfortune, for texts ſhow that the family periſhes: therefore women ſhall not, *in ſuch caſes*, apply to the king; but he being privately informed, muſt compel their relations to ſupply them with food and the like; and the rule muſt be ſettled as in the ſupplementary chapter *of the code of law*.

XLV.

MENU:—Should a man have buſineſs abroad, let

him assure a fit maintenance to his wife, and then reside *for a time* in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence:

2. While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave no support, let her subsist by *spinning and other* blameless arts*.

But if her husband go to a distant abode without providing for her subsistence, clothing, and the like, let the woman live by spinning and other blameless arts. CULLÚCABHATTA.

XLVI.

MENU:—When twice-born men take wives, both of their own class and others, the precedence, honour, and habitation of those wives must be settled solely according to the order of their classes.

When twice-born men marry wives, both of their own class and of other tribes, then the precedence in regard to respectful language and superior share of the heritage, honour shown by gifts of apparel, ornaments and the like, and habitation or preferable apartment of those wives, must be settled according to the order of the classes. CULLÚCABHATTA.

Others hold the precedence to be that which is announced in the subsequent text; namely, the duties of the eldest wife, personal attendance, and the like.

XLVII.

MENU:—To all such married men, the wives of the same class only (not wives of a different class by any

* See V. cxvi.

any means) muſt perform the duty of perſonal attendance, and the daily buſineſs relating to acts of religion.

Attendance on the perſon of her huſband (as preſenting food to him and the like), buſineſs relating to acts of religion (as the diſtribution of alms and the like, the entertainment of gueſts, and the care of the ſacrificial utenſils), and other daily buſineſs, the wives of the ſame claſs only muſt perform for twice-born men; not wives of a different claſs by any means.

CULLÚCABHATTA.

Diſputes between his wives muſt be thus reconciled by the huſband: and this ſuppoſes that he has a wife of the ſame claſs with himſelf.

XLVIII.

YÁJNYAWALCYA:—If he have a wife of equal claſs, let him not employ another in buſineſs relating to acts of religion; *but* if there be ſeveral wives of his own claſs, ſuch duties are lawfully performed by no other than the eldeſt.

If there be a wife of equal claſs, he ſhall not employ another in buſineſs relating to religious duty; but if there be ſeveral wives of his own claſs, then he ſhall not employ any other than the eldeſt of them *in ſuch offices:* hence, if the firſt married wife be alive, ſhe muſt be preferred in all matters relating to acts of religion. CHANDÉSWARA and VIJNYANESWARA.

If a wife of equal claſs be alive, he ſhall not employ one of unequal claſs in the care of the ſacrificial fire and the like; if there be ſeveral wives of his own claſs, he muſt ſo employ the eldeſt alone. Another caſe is mentioned in the *Chhandōga pariśiſhta* (L 3)*. 'SÚLAPANI.

Some remark, that two or three caſes might be eſtabliſhed, if

* The text is cited anonymouſly at full length; but differing from another text in one word only, and that not affecting the ſenſe, I refer the citation to that other text, ſubſequently quoted from CA'TYA'YANA. T.

the youngeſt wives be pre-eminent in virtue, or if ſeveral were married at the ſame time*. But the uncertainty as to the rule to be followed *in ſuch caſes*, is not liable to any objection: for the text only directs honour to be ſhown as enjoined; and the reſt is mentioned in another place.

XLIX.

VISHNU:—If many wives of his own claſs be living, with the eldeſt alone ſhould the huſband conduct buſineſs relating to acts of religion, even though his younger wives be dearer to him; but if there be no wife of equal claſs, the buſineſs may, in a caſe of diſtreſs, be executed by that wife only who is of the claſs next below him: yet let not a twice-born man ever *perform holy rites* with *the aid of* a *Súdrá* wife.

If there be no wife equal in claſs, the buſineſs relating to acts of religion may be accompliſhed by her who belongs to the claſs next below him. This is alſo intimated by MENU; "the precedence muſt be ſettled according to the order of the claſſes" (XLVI). "But let not a twice-born man ever perform holy rites with the aid of a *Súdrá* wife:" this denotes, *that he may not do ſo*, even though he have no wife of any other claſs but that of the *Súdrá*; elſe the terms of the text would be unmeaning. To fulfil their duty, twice-born men ſhould marry women of twice-born claſſes: and, from the expreſſion "the buſineſs may in a caſe of diſtreſs be executed by a wife of the claſs next below him," and from that which immediately follows "but let not a twice-born man ever &c." it is deduced, that a *Bráhmana*, in the utmoſt diſtreſs, may even employ a wife of the commercial claſs in ſuch offices. Thus ſome expound the law.

L.

* By eldeſt wife is meant, not the eldeſt woman, but the wife firſt married; and after her death, the next married has not a right exactly to the ſame precedence, becauſe ſhe is not the wife married *from a ſenſe of duty*: this will be evident in the ſequel. T.

L.

CÁTYÁYANA, quoted in the *Ch'handóga peris'iſht'a*:

—Let him who has many wives employ one of equal claſs in the care of the ſacrificial fire, and in attendance on himſelf; but if there be many ſuch, let him employ the eldeſt in thoſe duties, provided ſhe be blameleſs:

2. Or he may employ in ſuch offices any one of them who is mother of an eminent ſon, who is obedient to his commands, affectionate, capable of good management, kind in diſcourſe, and well diſpoſed:
3. Or without partiality, he may perform the rites *of religion* with all his wives ſucceſſively, in periods ſettled according to *their reſpective* precedence, or ſettled of his own authority to the beſt of his knowledge.
4. We know that the precedence of women originates in fortunate deſtiny; nor can a huſband, by a ſlight ſhow of reverence, content wives of twice-born claſſes:
5. That woman gains a fortunate deſtiny, who, conſtantly obſequious to her huſband, worſhips BHAVÀNÌ in this world with many acts of auſterity, and reverently attends the ſacrificial fire.

If there be many of them, and the eldeſt wife be blameleſs, he muſt employ her in matters relating to acts of religion: but if the eldeſt wife be blameable, then, ſince there is no certainty *which ſhould be employed* among ſeveral wives equal in claſs, it ſhould be determined by the ſecond rule (L 2). The *Retnácara*.

"Mother of an eminent ſon;" one who has borne a blameleſs ſon. If the eldeſt of all the wives be cenſurable, and the reſt be equal *in merit*, they ſhould, according to circumſtances, be

employed in ſuch duties in daily ſucceſſion: this ſome think to be fully intended in the *Retnâcara*.

He who has wives both of his own claſs and of others, ſhould aſſign to the wife of equal claſs the care of the *ſacrificial* fire, the hoſpitable entertainment of ſtrangers, and attendance on himſelf; but if there be many of his own claſs, to the eldeſt wife, provided ſhe be not diſabled by ſickneſs, nor chargeable with a vicious diſpoſition or the like. On another reading (*agni ś iſhṭyâdi ſuſrûſhâm*, inſtead of *agni ś iſhṭâtma ſuſrûſhâm*, care of the *ſacrificial* fire, and attendance on himſelf,) the ſenſe is, attention to his commands in reſpect of ſupplying the fire and the like, and other attendance on her huſband.

Or he may conſtantly employ, in the care of the ſacrificial fire and other offices relating to acts of religion, and in attendance on his own perſon, that wife among thoſe of equal claſs who is mother of a ſon; *or*, avoiding partiality, he may perform the daily rites *of religion* with the aſſiſtance of his wives in regular ſucceſſion, allowing five days and ſo forth to each according to their reſpective precedence, or diſtributing periods of his own authority and to the beſt of his knowledge. The precedence of women depends on their fortunate deſtiny: hence the precept for employing the eldeſt wife in *perſonal* attendance ſuppoſes her eminently fortunate; and that fortunate deſtiny has been obtained by obedience to her huſband, by many auſterities, by worſhip of BHAVÁNÍ, and by attention to the ſacrificial fire, in a former exiſtence. Therefore a woman, though eminently fortunate in her preſent exiſtence, ſhould pay adoration to BHAVÁNÍ and ſo forth, for the ſake of auſpicious fortune in a future birth. This ſtates the conduct incumbent on women; the preceding texts (L 1, 2 & 3) had ſtated the conduct incumbent on the huſband.

The *Periśiſhṭa Pracâśa*.

"Precedence originates in fortunate deſtiny:" this ſuppoſes ſuperiority in virtue, ſince that is expreſſed in the laſt verſe. The woman of equal claſs is ſuperior to all the reſt; for the approbation of the law prevails over the affection of the huſband. "Not by ſlight ſhow of reverence, &c:" thus, ſince what is executed by an auſpicious wife is beſt executed, ſhe is beſt qualified for offices pertaining to acts of religion. Thus others expound the law.

ROYAL ASIATIC

LI.

DACSHA:—The firſt is the wife married from a ſenſe of duty: the ſecond promotes ſenſual gratification; ſenſible, not moral effects proceed from her.

2. The firſt wife is called the wife whom acts of duty concern, provided ſhe be faultleſs; but if ſhe be faulty, there is no offence in employing another wife endued with excellent qualities.

"The wife whom acts of duty concern;" who officiates in acts of religion, and ſo forth. From the ſecond wife proceed ſenſible effects, (ſubject to the teſt of ſenſation, as the preſent gratification of careſſes and the like;) not moral effects, or the laſt ſolemn rites and the reſt of the acts relating to another world and ſo forth. But moral conſequences follow the production of a ſon; that, however, in a ſucceſſive order, *by the birth of a ſon from the ſecond wife, if the eldeſt wife be childleſs.* From this text it appears, that the ſeniority noticed in former texts (XLVIII and XLIX) is ſettled, not according to age, but according to the priority of nuptials. This is the principal caſe: he mentions a ſecondary one (LI 2); if the eldeſt wife be faulty, there is no offence in employing another on buſineſs relating to acts of religion; therefore another wife, endued with excellent qualities, ſhould be employed.

The wife deſcribed in the *Ch'handōga periśiſhta* (L 2) ſhould be conſidered as the wife endued with excellent qualities; if there be no ſuch grounds for ſelection, it may be ſettled as directed in the *Ch'handōga periśiſhta* (L 3). Since the *Ch'handōga periśiſhta* * completes the extracts of the *Sâma-vēda*, the adjuſtment by ſucceſſive daily periods ſhould be admitted without queſtion by *all* followers of the *Sâma-vēda*; for, were it queſtioned *by any perſon*, it muſt be admitted, even though directed by another *than the particular* Śâc'há, *by which that perſon is governed.* For it is ſaid, "what is enjoined in their own *Śâc'hás*, or declared by another, but

* The meaning of the name is "conſummation, or completion, of the followers of the *Sâma-vēda*." T.

but not inconſiſtent with their own, ſhould be followed by the wife, as the practice of maintaining a perpetual fire and the like."

LII.

MENU and VISHNU, after mentioning a *Súdrá* wife:—His ſacrifices to the gods, his oblations to the manes, and his hoſpitable attentions to ſtrangers, muſt be ſupplied principally by her: but the gods and manes will not eat ſuch offerings; nor can heaven be attained by ſuch hoſpitality.

Of him whoſe ſacrifices to the gods, whoſe oblations to the manes, whoſe hoſpitable attentions to ſtrangers, are ſupplied by a wife of the ſervile claſs, the gods and manes will not eat the offerings; nor does he attain heaven. The *Retnácara.*

Since the gods and manes eat not his offerings, he does not attain heaven; and his daily rites are unfulfilled. Although gueſts eat the food with a corporeal mouth, ſtill the duty of hoſpitable attention is not thereby truly fulfilled: conſequently he attains not heaven. If any perſon, through ignorance, follow a path repugnant to theſe rules, the king, any-how informed of it, ſhould inveſtigate the matter and reſtrain him. This conſtruction muſt be admitted; elſe the text (XLVI), and others on the ſame ſubject, are uſeleſsly placed under the title of Judicial Procedure, in the inſtitutes of MENU.

LIII.

DACSHA:—Dwelling in a houſe, *as a houſeholder* is *practiſed* for the ſake of happineſs, and that happineſs depends principally on the wife; ſhe is *indeed* a wife, who is attentive to precept, obedient to command,

2. And obſequious *to her lord;* who never ſpeaks unkindly; who is careful in houſehold management,

ment, virtuous, and prolifick: a woman, endued with ſuch qualities, is no doubt a goddeſs of abundance.

3. She whoſe temper is cheerful, who is ever attentive to her place, reſpectful and affectionate to her huſband, is *truly* a wife; any other is uſeleſs.

"For the ſake of happineſs;" ſince happineſs may be attained in another order beſides thoſe of devotion. "Who never ſpeaks unkindly;" who avoids harſh language. "Her place;" her habitation, bed, ſeat, and the like. "Reſpectful;" reverent. This details the qualities intended by the expreſſion "endued with excellent qualities."

LIV.

VYÁSA:—Let the wife of a virtuous man riſe before him, be diligent in houſehold management, repoſe on an humbler bed and ſeat, avoid unkind diſcourſe, and purſue his benefit.

After the huſband and wife have ſlept through the night, let her riſe firſt, at dawn of day; let her not require an equal bed and ſeat; and let her perform that by which her huſband may be benefited.

LV.

DACSHA:—With ſorrow does he eat who has two contentious wives; diſſention, mutual enmity, meanneſs and pain *diſtract his mind.*

But, although he have two wives, if they be complacent, his food is taſted with pleaſure; no ſtriſe or contention exiſts; no mutual enmity; no endurance of pain; no ſorrow.

LVI.

LVI.

MENU :—For a whole year let a huſband bear with his wife, who treats him with averſion; but after a year, let him deprive her of her ſeparate property, and ceaſe to cohabit with her.

With his wife, who has contracted a diſlike of her huſband, let him be patient for a whole year; but, after that period, taking back from his wife, who treats him with averſion, the ornaments and other property given by himſelf, let him ceaſe to approach her: but mere food and clothes muſt be allowed to her.

CULLÚCABHATTA.

That her hatred ſhould be endured for a whole year, is approved; within that period, a huſband, propoſing to forſake her, ſhould be prevented, by the interpoſition of friends, and by other means of conciliation: but, after a year, there is no offence in his forſaking her.

LVII.

MENU :—She who neglects her lord, though addicted to gaming, fond of ſpirituous liquors, or diſeaſed, muſt be deſerted for three months, and deprived of her ornaments and houſehold furniture:

2. But ſhe who is averſe from a mad huſband, or a deadly ſinner, or an eunuch, or one without manly ſtrength, or one afflicted with ſuch maladies as punish crimes, muſt neither be deſerted nor ſtripped of her property.

That woman who, omitting due attention and the like, neglects a huſband addicted to gaming and ſimilar vices, fond of inebriating liquors, or diſeaſed, muſt be unapproached for three months, and deprived of her ornaments, her bed, and other furniture.

CULLÚCABHATTA.

Here one addicted to intoxication, but not degraded, is meant.

As

As her neglect of a depraved huſband is a ſlight offence, the puniſhment is ſmall; but if ſhe repeatedly neglect him, it is proper that ſhe ſhould be repeatedly forſaken.

But ſhe who attends not a huſband, whoſe mind is alienated by the effect of air or other conſtitutional element, or a deadly ſinner (as deſcribed in the eleventh chapter), or unmanned, or deſtitute of manly ſtrength (from an obſtruction of the ſeminal juices or the like), or degraded, becauſe he is afflicted with leproſy or a ſimilar diſeaſe, muſt not be deſerted, nor deprived of her property. CULLÚCABHATTA.

"As deſcribed in the eleventh chapter;" for there crimes in the firſt degree and ſo forth are mentioned*.

"One without manly ſtrength;" impotent, though apparently poſſeſſing manhood. "Averſion from a huſband;" want of diligent attention, not abſolute deſertion; for a text declares,

LVIII.

A huſband, who is not an outcaſt, ſhould not be forſaken by women deſirous of happineſs in another world.

And it is *thus* ſhown, that a huſband who is not degraded may not be forſaken.

LIX.

NÁREDA:—A huſband who abandons an affectionate wife, or her who ſpeaks not harſhly, who is ſenſible, conſtant, and fruitful, ſhall be brought to his duty by the king with a ſevere chaſtiſement.

A huſband deſerting a wife endued with excellent qualities, to connect himſelf with another wife and ſo forth, incurs a ſevere chaſtiſement; that is, the puniſhment of a thief: for, on the ſubject of the puniſhment of robbery,

LX.

* Chap. XI, v. 55, &c.

LX.

VISHNU *ſays*:—The man who deſerts a faultleſs wife, *ſhall ſuffer the ſame puniſhment.*

LXI.

DÉVALA:—No atonement is ordained for that man who forſakes his own wife, through deluſion of mind, deſerting *her* illegally; nor for him who forſakes a virtuous ſon.

"Deſerting illegally;" abandoning *her* contrary to law. The *Retnâcara.*

"Deſerting illegally" is an epithet of the preceding term; thus the ſenſe is, "that man who abandons his wife illegally, or forſakes a virtuous ſon."

LXII.

DÉVALA:—A man may exclude from his bed, or from pilgrimage *(for the term is explained in both ſenſes)*, a wife who is afflicted with leproſy, degraded from her claſs, barren, or inſane, whoſe courſes are ſtopped, or who is wicked; but *he may* not *exclude her* from all buſineſs.

"From his bed;" according to the *Retnâcara.* Others expound it "from pilgrimage," but in a general ſenſe, comprehending careſſes and the like.

"*Not* from *all* buſineſs;" not from buſineſs of which ſhe is capable. 'SÚLÁPANI.

Women afflicted with leproſy, and the reſt, are excluded from ſexual intercourſe: commerce with their huſbands is forbidden; but they are not univerſally excluded from all buſineſs. However, women degraded from their claſs, and the reſt, are alſo rejected

jected in matters pertaining to acts of religion. Of these women, she who is afflicted with leprosy is debarred from commerce with her husband, because intercourse is improper; she who is degraded, lest a taint of sin be contracted from her; she who is barren, because it would be vain; she who is insane, because the text forbids it, or because she is considered as tainted with sin; she whose courses are stopped, because *the probability of* conception may be questioned; and she who is wicked, because she is an object of aversion.

LXIII.

NÁREDA:—It is a crime in them both, if they desert each other, or if they persist in mutual altercation, except in the case of adultery by a guarded wife.

2. Let a man banish from his house a wife who embezzles all *his* wealth under pretence of female property, or who procures an abortion, or who wishes the death of her husband.

"Crime;" sin. The *Retnâcara*.

Unless a wife, who is diligently guarded, be disloyal, both husband and wife, forsaking each other, are guilty of a heinous sin; but there is none in abandoning a disloyal wife. Thus some expound the text.

"Who embezzles all *his* wealth, under pretence of female property;" one by whom all property is embezzled as female property. The *Retnâcara*.

That is, as her own female property.

A wife by whom all *his* wealth is falsely included in female property. The *Calpa drúma*.

"Let him banish from his house;" banishing her from the principal habitation, let him assign her a *separate* dwelling within his close. Thus some expound the law.

LXIV.

Uncertain:—Let him banish from the house a wife who

who conſtantly diſſipates wealth, and who ſpeaks unkindly, and her who eats before her huſband:

2. Let him never dignify with his love a barren wife, nor her who bears only daughters, nor one who is ever contumacious; if he do, he partakes of her faults.

LXV.

MENU:—That woman, who, having bathed after her courſes, refuſes the approaches of her huſband, let him baniſh, proclaiming her, in the middle of the town, guilty of infanticide.

2. And her who, through averſion from her huſband, falſely pretends to have her courſes, let him baniſh, proclaiming her, in the preſence of kinſmen, guilty of infanticide.

"Averſion;" hatred. In the preceding caſe a motive is ſuppoſed in the want of affection, but ſhort of hatred: thus the texts are not without a difference.

Or the laſt text relates to many inſtances of *deception in regard to* her courſes; *the firſt concerns a ſingle refuſal.* The *Retnácara.*

"Proclaiming her offence;" announcing her guilty of infanticide; becauſe ſhe has oppoſed the procreation of an embryo, declaring her equally guilty with the ſlayer of an infant. Her refuſal of going near her huſband is the ſubject of the firſt text; the ſubject of the ſecond is her refuſal of his careſſes, through hatred, though ſhe have attended him. Such is the diſtinction according to other *lawyers.* On this conſtruction, ſince the firſt caſe does not clearly ſtate a motive different from hatred, the ſenſe of the laſt text is included in the firſt; if ſhe deceive her huſband many times in regard to her menſes, ſhe has of courſe deceived him in one inſtance.

LXVI.

BAUDHÁYANA:—Prudent men forſake a wife who

neglects due attendance, who is barren, or immoral, or who frequents the houſes of ſtrangers; *they* inſtantly *forſake* one who ſpeaks unkindly:

2. In the tenth year a man may forſake one who bears no children; in the twelfth, one who bears daughters only; in the fifteenth, one whoſe children are *all* dead; but inſtantly one who ſpeaks unkindly.

"Immoral;" vicious. "They inſtantly forſake one who ſpeaks unkindly:" they forthwith abandon her. Thus, a man ſhould endeavour to reclaim one who neglects due attendance and ſo forth; but no ſuch endeavour is uſed with one who ſpeaks unkindly. A man may forſake a barren wife in the tenth year after the period when pregnancy might have been expected; and one whoſe children are *all* dead, in the fifteenth year after the death of her children.

LXVII.

MENU:—A wife who drinks any ſpirituous liquors, who acts immorally, who ſhows hatred *to her lord*, who is *incurably* diſeaſed, who is miſchievous, who waſtes his property, may at all times be ſuperſeded by another wife.

A wife who is addicted to the uſe of any forbidden ſpirituous liquor, whoſe conduct is vicious, who is diſpoſed to act in oppoſition to her huſband, who is afflicted with leproſy or other *ſimilar* diſeaſe, who is diſpoſed to injure her huſband, and who continually ſquanders *his wealth*, may be ſuperſeded; that is, another marriage may be contracted, though ſhe be living.

CULLUCABHATTA.

A *ſecond* marriage, *or one* ſubſequent to her's, contracted by her huſband, is ſuperſeſſion.

LXVIII.

YÁJNYAWALCYA :—One who drinks inebriating liquors, who is *incurably* diſeaſed, who is quarrelſome, or barren, who waſtes his wealth, who ſpeaks unkindly, who brings forth only daughters, may be ſuperſeded by another wife; and ſo may ſhe who manifeſts hatred to her huſband.

Who drinks ſpirituous liquors, whether ſhe be of the ſervile or other claſs; for the prohibition is general.

LXIX.

Half his body periſhes, whoſe wife drinks intoxicating liquors.

"Diſeaſed" (LXVIII); infected with a laſting malady. "Quarrelſome;" contentious. "Barren;" unprolifick. "Who waſtes his wealth;" who diſſipates his property. "Who ſpeaks unkindly;" whoſe diſcourſe is evil. "Who brings forth daughters;" who bears daughters only. "Who manifeſts hatred to her huſband;" who acts, on every occaſion, injuriouſly to him.

The *Mitācſharā*.

"One who drinks inebriating liquors;" *meaning* the wife of a twice-born man. "Diſeaſed;" and *therefore* incapable of houſehold affairs. "Quarrelſome;" or wilful. Naturally "barren." "Who attempts her own life" (for the gloſs ſubſtitutes *ātmaghnì* for *art'haghni*); who attempts ſuicide by hanging herſelf or otherwiſe. "Who ſpeaks unkindly;" 'to her huſband' muſt be ſupplied. "Who brings forth daughters;" who bears only daughters. "Who manifeſts hatred to a man;" who deteſts the ſon of *her huſband by* another *wife*, and ſo forth.

The *Dípacalicā*.

The text cited (LXIX) concerns a twice-born man; for thoſe who are not degraded in conſequence of drinking ſpirituous liquors themſelves, are not degraded in conſequence of their wives

drinking intoxicating liquors. Such is the opinion intimated in the *Dípacalicá*. The wives of thoſe who are not permitted to drink inebriating liquors muſt be forſaken, if they be addicted to the evil practice of intoxication from drinking ſuch liquors; for they are degraded: but the deſertion of all degraded women is enjoined in another text. This remark is made by other *commentators*.

LXX.

MENU:—A barren wife may be ſuperſeded by another in the eighth year; ſhe whoſe children are all dead, in the tenth; ſhe who brings forth *only* daughters, in the eleventh; ſhe who ſpeaks unkindly, without delay.

In the eighth year of barrenneſs, counted from the firſt ſeaſon, ſhe may be ſuperſeded; one whoſe children are *all* dead, in the tenth; and one who bears *only* daughters, in the eleventh: but ſhe who ſpeaks unkindly, without delay, provided ſhe have no ſon; *for*, if ſhe have male iſſue, ſhe may not be ſuperſeded, ſince that is prohibited by another Sage (LXXI).

CULLÚCABHATTA.

LXXI.

If his wife be virtuous, and have borne a ſon, let not a man contract another marriage, unleſs he do ſo on *the* loſs *of his wife or ſon*.

"Virtuous" here intends ſpeaking affectionately and ſo forth. No inconſiſtency with the text of BADUHÁYANA (LXVI) can be here alleged; for he ſpeaks of deſertion, but MENU ſpeaks of a ſecond marriage. It muſt be noticed, that it appears from the text of MENU (LXX), which permits the ſuperſeſſion of a barren wife in the eighth year and ſo forth, and from the other text (LXXI), which forbids the ſuperſeſſion of a virtuous wife who has borne a ſon, that a ſecond marriage ſhould not be contracted without ſome fault on the part of the firſt wife. But

marriages with women of the four claſſes may be contracted by an amorous man, with the conſent of his firſt wife any-how obtained.

VIJNYÁNÉSWARA, quoting the following text, with this remark, 'YÁJNYAWALCYA denounces *puniſhment* againſt one who ſuperſedes *his wife* without juſt cauſe for ſuperſeſſion,' adds, 'he who forſakes, that is, ſuperſedes ſuch a wife, ſhall be compelled by the king to pay the third part of his property.'

LXXII.

YÁJNYAWALCYA:—He who forſakes a wife, though obedient to his commands, diligent in houſehold management, mother of an excellent ſon, and ſpeaking kindly, ſhall be compelled to pay the third part *of his wealth; or, if* poor, to provide a maintenance for that wife.

But the author of the *Dípacalicá* has not explained this deſertion as conſiſting in ſuperſeſſion.

LXXIII.

MENU:—But ſhe who, though afflicted with illneſs, is beloved and virtuous, muſt never be diſgraced, though ſhe may be ſuperſeded by another wife with her own conſent.

With the aſſent of her again, who, though afflicted with diſeaſe, is obedient to her huſband, and virtuous, another marriage may be contracted; but ſhe muſt never be diſgraced.

CULLÚCABHATTA.

"Afflicted with illneſs" is not to be taken in a large ſenſe, comprehending accidental barrenneſs and the like; for progeny is declared neceſſary. This is remarked by other *lawyers*.

LXXIV.

LXXIV.

YÁJNYAWALCYA :—But a ſuperſeded wife muſt be maintained; elſe a great offence is committed.

Though ſuperſeded by another wife, ſhe muſt be treated with courteſy, and receive gifts and reſpect as before; elſe, (that is, if ſhe be not maintained,) a heinous ſin is committed, and a fine is incurred, as will be mentioned. VIJNYÁNÉSWARA.

But no reverence, ſay others, is due to a degraded woman.

"A fine, as will be mentioned;" alluding to the forfeiture of a third part of his property (LXXII). It ſhould be here noticed, that a woman addicted to inebriating liquors (LXVIII) comprehends, in a general ſenſe, any woman liable to abandonment, as declared by other Sages.

LXXV.

MENU :—If a wife, legally ſuperſeded, ſhall depart in wrath from the houſe, ſhe muſt either inſtantly be confined, or abandoned in the preſence of the whole family.

That wife again, who, being ſuperſeded, departs in wrath from the houſe, ſhould be inſtantly chaſtiſed with a rope or the like, and compelled to ſtay; or, if her reſentment cannot be repreſſed, ſhe muſt be abandoned in the preſence of her father and the reſt of her family. CULLÚCABHATTA.

This abandoning of her in the preſence of her family is a repudiation proclaimed to all, in this form, "ſhe is now rejected by me;" and afterwards, offences committed by that woman do not affect the man.

LXXVI.

VASISHT'HA :—From connubial intercourſe, from pilgrimage, from what pertains to acts of religion,

theſe four ſhould be rejected, *namely*, one who yields herſelf to her huſband's pupil, or to his ſpiritual parent;

2. And eſpecially one who attempts the life of her lord, or who converſes with the vileſt *of men*.

" Vile ;" deſpicable, as a *Chândâla* or the like.
The *Retnâcara*.

" Vile ;" abject, begotten in the inverſe order of the claſſes.
The *Dípacalicâ*.

Others add, that " rejection" means excluſion from connubial intercourſe and the reſt.

LXXVII.

YÁJNYAWALCYA :—From diſloyalty *in thought* a woman is purified by her courſes ; but, in caſe of conception *by unlawful commerce*, deſertion is enjoined by the law ; and ſo in the caſe of her deſtroying an embryo, or ſlaying her huſband, or committing any ſin in the firſt degree.

Since a text of MENU expreſſes, that a woman, whoſe thoughts have been unchaſte, is purified by her monthly diſcharge *, this purification by her courſes concerns mental diſloyalty : but if ſhe have conceived by a man of low claſs, ſhe muſt be forſaken ; of courſe expiation is ſuggeſted in caſe of diſloyalty in mind or body, provided ſhe do not conceive. If ſhe deſtroy an embryo, ſlay her huſband, or commit any ſin in the firſt degree, ſhe muſt be forſaken. SÚLAPÁNI.

VIJNYÁNÉŚWARA concurs in that expoſition ; but explains " in caſe of conception," in caſe of pregnancy by commerce with a man of the ſervile claſs ; and quotes the following text of law ;

LXXVIII.

* Chapter V, v. CVIII.

LXXVIII.

Wives of *Bráhmanas*, *Cſhatriyas*, and *Vaiſyas*, approached by a man of the ſervile claſs, are purified by penance, provided they bring forth no children *by ſuch commerce;* and not otherwiſe.

LXXIX.

HÁRÍTA:—A man ſhould avoid her who has deſtroyed an embryo, has criminally converſed with a man of low claſs, with a pupil, or with a ſon, is addicted to drinking or to brawls, or waſtes property or *ſtores of* grain.

LXXX.

MENU:—That a woman who follows her own will ſhould be forſaken, is ordained by the law; but let not a man ſlay his wife, nor mutilate her perſon:
2. VIVASWAT* declared, that a woman wilfully diſloyal ſhould be forſaken, not ſlain nor diſfigured; a man ſhould avoid the ſlaughter of women.

He declared, that ſhe ſhould not be ſlain, nor disfigured.
The *Retnácara.*

LXXXI.

NÁREDA:—If a woman be diſloyal, ignominious tonſure, the loweſt bed, the meaneſt food, the worſt habitation, and the taſk of removing filth, conſtitute her puniſhment.

* Title of SU'RYA.

LXXXII.

YÁJNYAWALCYA :—Let a man keep a diſloyal wife deprived of her rights, ſqualid, maintained on a ball of grain alone, ſubdued, and *only* ſuffered to repoſe on the meaneſt bed.

On this CHANDÉSWARA remarks, that 'rejection and other penalties are denounced againſt diſloyal wives, according as the offence is heinous or venial: the rule of deciſion muſt depend on the ſeveral diſtinctions of diſloyalty.' Meaning wilful and caſual diſloyalty, and other diſtinctions. But VIJNYÁNÉSWARA ſays, ſhe who is diſloyal ſhould be kept by her huſband in her own houſe, "deprived of her rights," that is, diveſted of her right to maintenance, to jewels and the like; "ſqualid," or deſtitute of collyrium, perfumed unguents, apparel, and ornaments; "ſubdued," by reſtricting her food to the mere ſuſtenance of life, and by other expedients; and only ſuffered to repoſe on the meaneſt bed, or on the bare ground: *let him ſo treat her*, for the ſake of inducing repentance, not for the ſake of atonement; ſince penance is ſeparately mentioned.

MENU :—A wife, exceſſively corrupt, let her huſband confine to one apartment, and compel her to perform the penance ordained for a man who has committed adultery *.

Sleeping on the bare ground and ſo forth is her puniſhment, according to other lawyers.

To prevent the repetition of diſloyalty, let him confine her in her own apartment, allowing her a ball of rice *only* for her ſuſtenance. 'SÚLAPANI.

LXXXIII.

* The laſt hemiſtich only was inſerted; I cite the whole verſe, as the quotation would not otherwiſe be intelligible. T.

LXXXIII.

VRĬHASPATI :—A wife who is diſloyal, *though* maintained and guarded, let a man keep in his houſe, ſqualid in her perſon, ſuffered only to repoſe on the loweſt bed, and maintained on a ball of grain alone :

2. But ſhe who has *criminally* converſed with a man of low claſs, may legally be forſaken, or *even* put to death.

Some remark, that the prohibition of putting a wife to death (LXXX) does not extend to the caſe of adultery with a man of low claſs.

LXXXIV.

Smrĭti, quoted in the *Mitácſhara* :—He who refuſes to approach his wife, when ſhe has bathed after her courſes, doubtleſs ſinks to the region of horror, where the ſlayers of prieſts are tortured.

LXXXV.

YÁJNYAWALCYA :—SÓMA gave them fairneſs ; a *Gand'harva* endowed them with a charming voice ; and the regent of fire, with univerſal purity : hence women are truly pure.

Therefore, in reſpect of univerſal contact, embraces, and the like, women are conſidered as pure and undefiled.

VIJNYÁNÉSWARA.

A man, therefore, muſt neceſſarily approach an unoffending wife at the preſcribed ſeaſon, elſe he would be criminal, and his wife would not be guarded. All this muſt be maintained by the king.

CHAP.

CHAP. II.

ON THE

DUTIES OF A WIFE.

SECT. I.—*On the Conduct enjoined to Women whose Protectors are present.*

LXXXVI.

MENU:—By a girl, or by a young woman, or by a woman advanced in years, nothing muſt be done, even in her own dwelling-place, according to her mere pleaſure:

2. In childhood muſt a female be dependent on her father; in youth, on her huſband; her lord being dead, on her ſon; *if ſhe have no ſons, on the near kinſmen of her huſband; if he left no kinſmen, on thoſe of her father; if ſhe have no paternal kinſmen, on the ſovereign:* a woman muſt never ſeek independence.

3. Never let her wiſh to ſeparate herſelf from her father, her huſband, or her ſons; for, by a ſeparation from them, ſhe expoſes both families to contempt.

Thus, if ſhe receive the careſſes of any man but her huſband, in conſequence of her ſeparation from theſe protectors, both families are diſhonoured.

LXXXVII.

LXXXVII.

YÁJNYAWALCYA :—Careful of the domeſtick furniture, diligent in the management of the houſehold affairs, cheerful, avoiding expenſe, let her ſhow reverence to her huſband's parents, obſequiouſly honouring her lord.

Carefully repoſiting in their places the domeſtick furniture, or ſeats and utenſils employed in the houſe; as the peſtle, mortar, and winnowing baſket, and the like, in the place where grain is huſked, and the grinding ſtone and pebble together in the place where things are ground, and ſo forth. The *Mitácſharâ.*

'SULAPÁNI *alſo explains the ſame term* 'repoſiting the *houſehold* utenſils.'

LXXXVIII.

Smríti, quoted in the *Retnácara* :—An affectionate well-wiſher to her lord, ſtrict in her conduct, keeping her ſenſes in ſubjection, ſhe acquires renown in this world, and, after her death, the higheſt abode.

Entertaining good wiſhes, founded on affection.—'SÚLAPÁNI. "Affection;" excluſive mental regard, and wiſhing that which is beſt in a moment of diſtreſs. VIJNYÁNESWARA.

LXXXIX.

MENU :—She muſt always live with a cheerful temper, with good management in the affairs of the houſe, with great care of the houſehold furniture, and with a frugal hand in all her expenſes.

XC.

VRIHASPATI:—Riſing early, reverence to venerable perſons, preparation of food and condiments, the loweſt ſeat and bed: ſuch is declared to be the proper conduct of women.

"Preparation of food and condiments;" the dreſſing of victuals and the like.

XCI.

DÉVALA:—Dependence, attendance on her huſband, aid in his religious ceremonies, reſpectful behaviour to thoſe who are entitled to veneration from him, hatred to thoſe who bear enmity to him, no ill will towards him, conſtant complacency, attention to his buſineſs, are the duties of women.

"Aid in his religious ceremonies;" attendance on her lord when the ſacrificial fire is ſupplied, when offerings are made, and ſo forth. Reſpectful behaviour to his father and others entitled to veneration and reſpect from him. "Hatred to thoſe who bear enmity to him;" *for* no benefit ſhould be conferred by a woman on thoſe who injure her huſband, even though they ſooth her with praiſe. "No ill will towards him;" no thoughts injurious to her huſband. "Attention to his buſineſs;" induſtry in buſineſs which concerns her huſband.

XCII.

VISHNU, after premiſing "duties of women:"—Accompanying of her huſband, reverence of his father, of ſpiritual parents, of deities and gueſts, great cleanlineſs in regard to the domeſtick furniture, and care of the houſehold veſſels; avoiding the

the uſe of philters and charms, attention to auſpicious cuſtoms, auſterities after the death of her huſband, no frequenting of ſtrange houſes, no ſtanding at the door or window, dependence in all affairs, ſubjection to her father, huſband, and ſon, in childhood, youth, and age: *ſuch are the duties of a woman.*

"Accompanying of her huſband;" going wherever her huſband goes, but to no place unauthorized by him: or it may be read, attending him at his religious ceremonies. "Uſe of philters and charms;" ſubduing by incantations and drugs. "Standing at the door and window," to gaze at her huſband's countenance: or "not ſtanding at the door and window," leſt her huſband ſhould entertain ſuſpicions of her holding commerce with other men.

XCIII.

The *Mahábhárata*:—Should her huſband diſcover a woman to be wholly addicted to charms and philters, let him ſhun her as he would a ſerpent which had crept into his houſe.

XCIV.

Speech of the goddeſs of abundance to the goddeſs of the earth, quoted in the *Retnacara**:—"With women ever pure and adorned, faithful to their lords, ſpeaking kindly, not laviſh, bleſſed with progeny, careful of the houſehold goods, attentive to religious worſhip;

2. "Whoſe houſes are neat, whoſe ſenſes are ſubdued, who avoid ſtrife, who are not avaricious, who reſpect their duty, who are endued with tenderneſs,

* From VISHNU, if the citation in the *Vivádárnava* be correct.

derneſs, I am ever preſent, O thou ſupporter of worlds!"

"Attentive to religious worſhip;" attentive to the buſineſs of providing oblations for the worſhip of deities and for other ſacraments. "Who avoid ſtrife," or contention. "Who are not avaricious;" who are not covetous.

XCV.

SANC'HA and LIC'HITA:—For every ſucceeding day let the wife clean the veſſels uſed at meals; let her ſweep the dwelling-houſe and gate, and, when clean, preſerve it ſo; let her provide curds, rice, *durva* graſs, new leaves, and bloſſoms, for oblations; let her reverently ſalute her huſband's parents, and afterwards perform the neceſſary buſineſs of the houſehold: let her eat nothing before the gods and gueſts are ſatisfied, nor before her huſband *has eaten*, except drugs *ſwallowed* medicinally.

"For every ſucceeding day;" for each coming day. The conſtruction of the ſentence is this: let her eat nothing, before her huſband *has eaten*, except drugs *ſwallowed* medicinally; but as a remedy for any diſtemper, ſhe may ſwallow drugs, even before her huſband *has eaten*. The *Retnâcara*.

"Let her ſweep the dwelling-houſe and gate;" let her clean the habitation. "And, when clean, preſerve it ſo;" prevent the introduction of uncleanly things into a clean houſe: or let her ſweep the court-yard and the like.

XCVI.

RISHYAŚRIŇGA:—Let her attend to the buſineſs of the

the houſe, and heed her ornaments; after the daily bath, let her adorn her locks with flowers and with dreſs;

2. Privately let her retire early *from the couch of her lord*, that no other may perceive *her withdrawing*; let her pay adoration to the deities, and ſupply oblations with fragrant mixtures and bloſſoms.

"Attend to the buſineſs of the houſe;" be diligent in domeſtick affairs. "Heed her ornaments;" brighten them, by cleaning and the like. "After the daily bath adorn her locks;" embelliſh them braided after the daily bath. The *Retnâcara*.

"Supply oblations with fragrant mixtures and bloſſoms;" at twilight, let her prepare oblations at home with mixt perfumes, lamps, bloſſoms, and the like, in honour of the deities: thus ſome explain the phraſe. "Privately let her retire;" at the cloſe of night, let her withdraw from her huſband before any other perſon wakes.

XCVII.

SANC'HA and LIC'HITA:—A woman muſt not go forth without veſture, nor move without her upper garment; nor uſe perfumes, garlands, jewels, or variegated apparel in ſeaſons of mourning; nor converſe with ſtrangers, except traders, mendicants and aged men; nor expoſe her navel. Faithful to her family, ſhe muſt wear covering from her ankles upwards; and never bare her breaſts; nor laugh uncovered, in the preſence of reſpectable men.

Diſcovering her face "in the preſence of reſpectable men;" but covered, ſhe may indulge herſelf in laughter. The *Retnâcara*.

"Without veſture;" a woman muſt not go forth unclothed. Another reading has, "a woman muſt not go forth unbidden;" ſhe

ſhe muſt not go beyond the houſe or field without the aſſent of her lord. She muſt not move in a ſhort ſhift, with her breaſt bare, and without her upper garment. "Variegated;" of diverſified colours. She muſt wear clothes from her ankles to her navel, and not looſen the covering of her breaſt in the preſence of any perſon.

XCVIII.

VYÁSA:—Sitting at the door, continually looking out from the windows, converſing with deſpicable perſons, and laughing *unſeaſonably*, are faults which bring infamy on the women of a family.

"Converſing with deſpicable perſons;" talking with them.

XCIX.

MENU:—Drinking *ſpirituous liquor*, aſſociating with evil perſons, abſence from her huſband, rambling abroad, unſeaſonable ſleep, and dwelling in the houſe of another, are ſix faults which bring infamy on a *married* woman.

All theſe are ſtated as modes of conduct which bring infamy on women. The *Retnácara*.

"Drinking;" quaffing ſpirituous liquors. "Aſſociating with evil perſons;" with diſloyal women and the like. "Rambling abroad;" going to the houſes of ſtrangers, of her own accord, without a ſufficient motive. Sleeping, or repoſing, by day. Dwelling in the houſe of any ſtranger.

C.

VRÍHASPATI:—Drinking ſpirituous liquors, rambling abroad, ſleeping by day, and neglect of *the houſehold*

houſehold buſineſs, are faults which bring infamy on a woman.

" Neglect of buſineſs" here ſignifies not performing the houſehold buſineſs. The *Retnácara.*

The meaning is, not attending to the care of houſehold utenſils and the like, and not ſweeping the houſe and ſo forth.

CI.

SANC'HA and LIC'HITA:—Let not a woman aſſociate with harlots, with women whoſe conduct is immoral, with fortune-tellers, with ſeducers and corrupters, nor with ſinners: by their ſociety ſhe would be perverted. Let her not attempt any thing injurious to her huſband; nor uſe veſſels, or other utenſils employed at meals, of ſuch ſorts as are forbidden; nor ſleep ſupine; nor wear ſandals.

" Harlots;" courteſans. " Fortune-tellers;" women who practiſe divination: they are mentioned, conſidering them as diſpoſed to pervert others. " Seducers;" women who delude others: theſe are mentioned with ſome diſtinction ſuppoſed between them and the women whoſe conduct is immoral. " Corrupters;" women who attempt to pervert *their companions:* theſe are ſuppoſed different from the women already deſcribed. " Sinners;" degraded women and others who have been guilty of crimes. The *Retnácara.*

Others explain " women whoſe conduct is immoral" to be ſuch as are addicted to gaming and the like: they induce a diſpoſition to evil in *other* women. " Seducers;" women practiſed in guile. " Corrupters;" women ſkilled in inſidious diſcourſe tending to lead the mind into various errors.

CII.

HÁRÍTA:—We will next propound the conduct en-

joined to married women. The wife is the home: a man ſhould not conſider as his home a habitation ungraced by a wife; therefore is ſhe another home. Thoroughly cleaning the houſe, let her remove impurities falling in a well-cleanſed and dignified habitation, and lay up what is looſe; let her ſhun diſcourſe with other men *beſides her huſband*, and the company of a pretended mendicant; let her not frequent ſtrange houſes, plains or groves, or convents of mendicants; let her not loiter on the road to the *publick* well, nor walk by twilight; let her not think of uſing the bed, the ſeat, the clothes, or the jewels of others, without reſtoring them to a ſtate of purity; nor eat in the ſame veſſel *with another*, nor drink ſpirituous liquors, nor eat fleſh-meat, nor orts, nor refuſe, unleſs from her ſpiritual parents, her huſband, or her ſon; let her be void of deſire for other men *beſides her huſband;* let her ſhun vain expences, and avoid petulant contradiction, ſloth, gloomineſs, emulation *of other families* and the like. Soiled with orts, ſhe muſt not repair to the temples of the deities, or to the houſe of him to whom her affections are due; without counſel, or before ſhe has ſupplied the *ſacrificial* fire, ſhe muſt not decorate her perſon, nor touch with unwaſhed hands the goblet, the ſieve, or the veſſels of the dairy: ſhe muſt waſh, and repoſit in a ſecure place, the caldron, its lid, the ladle, and *other* utenſils. On the morrow, again waſhing them, let her uſe them in the preparation of food: by her huſband's directions ſhe may touch the veſſels employed for *the* milk, *whence oblations are ſupplied:* having waſhed,

wiped

wiped and placed the metallick veſſels, having ſwept and wiped the houſe and ſo forth, let her perform the offices committed to her at the approach of the time for oblations to the aſſembled gods, bathing according to the motive for ablutions: clothing herſelf with two white garments, having waſhed her hands and feet, having ſpit and having ſipped water, let her enter the temple and pay her adorations; and let her place fire in the kitchen, provide ſacrificial fuel, *cuśa* graſs, flowers, oblations, and veſſels uſed in propitiatory rites, and anoint with clarified butter the food and the like *intended for uſe, in the ſame manner with that intended for offerings;* and let her perform any other daily buſineſs. When all this has been done, and the fire has been ſupplied in honour of deities, let her bring the oblations for the wives of gods. When the offerings to deities, and the hoſpitable attentions to gueſts, have been performed, according to the means of the houſeholder, and after ſatisfying his pupils and friends and her huſband himſelf, the wife, with his permiſſion, may eat the reſidue in private: and having rinſed *her* mouth with water kept for her own uſe, and waſhed and cleaned the veſſels employed, ſhe muſt lay out *a part of* the reſidue in a ſpot ſituated within the cloſe, and equally diſtant from the north and eaſt regions, *ſaying*, "Salutation to RUDRA the lord of cattle!" this is a fixed rule. In the evening the ſame *offices* ſhould be repeated, *which are directed for each ſucceſſive morning.* As for what remains *to be done* after theſe offices, let her make a wall of aſhes at the door, *ſaying*,

"Salutation to the adorable RUDRA marked with aſhes! I make a fence of aſhes;" and let her touch *therewith* her lord, her ſon and the reſt, herſelf, and any thing which ſhould be guarded. She muſt not enter her bed with unwaſhed feet, nor naked, nor ſoiled with orts, nor diſreſpectfully, nor without ſaluting her huſband's feet; nor riſe expoſed to view, nor later than the riſing of the ſun; nor without a veſſel of water. She muſt regularly clean the houſe; ſhe muſt be circumſpect, careful for the beſt, ſerene, full of good wiſhes; ſhe muſt ſpeak affectionately to her huſband; ſhe muſt not ſit while he ſtands; nor ſit above him, nor in a queſtionable place; nor gaze at him continually: ſhe muſt waſh his feet, preſs his limbs with her hands, attend him with a fan when he feels heat, and wipe from his limbs perſpiration excited by the ſultrineſs of ſummer. She muſt relieve him, when his head ſhakes *through pain*, and meet him in the yard when he returns fatigued with a load from another town. Entertaining no evil thoughts, let her do him honour with rice, graſs and water preſented in an *argha*; and, under his directions, practiſe auſterities, execute the buſineſs of the deities, and perform ablutions.

"A wife is another home;" even ſhe is the home, ſince *marriage* conſtitutes the order of a houſeholder. "Thoroughly cleaning the houſe;" accompliſhing the defecation of it by thorough ſweeping. The *Retnâcara*.

The ſenſe is rendering the houſe neat, and ſweeping it. "Lay up what is looſe;" or hide what is unconcealed. "Shun diſcourſe with other men;" if wiſhes may be thereby excited, avoid the ſight of other men, and ſo forth: "and ſhun the company of a mendicant;"

mendicant;" in the apprehenſion of his proving to be a pretended mendicant, refrain from aſſociating even with a true one, leſt her duty be infringed. "Let her not frequent the houſes of others." "Groves;" this term is explained by AMERA, rows *of any thing, and of trees eſpecially*: the ſenſe is, 'regular woods.'

"Let her not loiter on the road to the well;" let her not ſtop on the road while going to the well. The *Retnácara.*

On that road eſpecially, by which all perſons fetch water, no delays are juſtified. "Nor walk by twilight;" ſtill leſs by night. Let not a well-diſpoſed woman indulge herſelf in ſuch gratifications, leſt infamy attend her.

Without again cleaning and waſhing them, let her not uſe the bed, ſeat or clothes of others, &c; let her not employ them in any circumſtance. The *Retnácara.*

The laſt term, "jewels," being expreſſed in the plural number with the ſenſe of "and the like," it is thereby intimated, that the acceptance of a litter and of other things, which have been uſed by ſtrangers, is likewiſe improper.

"Eat in the ſame veſſel;" take a repaſt with another. The *Retnácara.*

The meaning is, off the ſame veſſel with another.

Let her ſhun ſpirituous liquors and fleſh meat, and avoid the orts and rejected food of any other beſides her huſband, his father, and his ſon. Or the ſenſe may be, that even ſhe who does drink ſpirituous liquors ſhould not drink them out of the ſame veſſel with any other than the perſons enumerated. "Spiritual parent" denotes her huſband's father and the reſt. The *Retnácara.*

"Deſire;" eager wiſh. "Vain expenſes;" uſeleſs expenditure of wealth. The *Retnácara.*

"Petulant contradiction;" the conſtruction *of the ſentence* is, avoid controverſy with her huſband and the reſt. Some read *pretyudvahanam* inſtead of *pretyudvadanam*, and explain it, 'her own contracting of *another* marriage when her huſband eſpouſes *another wife*.'

"Emulation;" dreſs and ſpeech unſuitable to her family, and the like. The *Retnácara.*

The ſenſe is, "avoid ſloth and the reſt." "Gloomineſs;"

cauſeleſs ſorrow. " Nor, defiled with orts, enter the apartment of him to whom her affections are due."

" Without counſel ;" without *due* conſideration.

The *Retnácara*.

The meaning is, let her not dreſs without conſideration.

" The goblet ;" the cup or the like uſed in ſacrifice. " The ſieve " or ſearce. The *Retnácara*.

" Veſſels of the dairy ;" veſſels containing milk. This has a large ſenſe ; ſhe muſt not touch with unwaſhed hands, any other veſſel dedicated to the ſervice of the deities.

And, waſhing the caldron and other utenſils for the preparation of food on the ſucceeding day, depoſit them in a ſafe place.

The *Retnácara*.

Meaning, that ſhe muſt not neglect them after preparing food for that day. To waſh them is abſolutely requiſite ; let her not ſuffer any prepared grain or condiments to remain in the veſſels. " On the morrow ;" explained by AMERA, 'the day not yet arrived.'

The day for which the veſſels were cleaned and laid by, before it arrived ; when that day has arrived, again waſhing them, let her prepare food. The *Retnácara*.

" Uſe them in the preparation of food ;" the meaning is, ſhe muſt again clean the caldrons and other veſſels uſed in cookery.

" By her huſband's directions ;" with her huſband's aſſent.

The *Retnácara*.

Some remark that the ſenſe is, 'veſſels uſed for the milk intended for the deities.' " Having waſhed, &c." the three participles are referred to the term " metallick veſſels."

" According to the motive for ablution ;" '*ſuggeſted* by her huſband,' ſhould be ſupplied. Hence the ſenſe is, at the approach of the time for oblations to the aſſembled gods, execute the offices committed to her, when her huſband bids her perform ablutions.

The *Retnácara*.

" According to the motive for ablutions ;" on account of the mid-day bath. In fact the commiſſion might be delivered by ſaying, " bathe :" the bath may therefore be directed by implication. Thus the meaning is, on learning from her huſband that the time approaches for oblations to the aſſembled gods, let her

ſpeedily

ſpeedily bathe. The ſame ſhould be underſtood of other buſineſs*.

" Having ſpit;" having ejected the phlegm or the like which was in her mouth. The *Retnácara.*

Immediately after placing fire in the kitchen or place of cookery, let her prepare food; and afterward bring the flowers, and the like, which had been previouſly collected. " Bring the oblations:" the term *(beli)* is explained by AMERA, implements or materials of worſhip. " Anoint with clarified butter, &c.; and perform any other daily buſineſs." According to the *Retnácara*, the meaning is, ſmear with clarified butter the food intended for uſe, as that is ſmeared which is intended for the deities. Some words are ſupplied in the *Retnácara*, after this mode, ' obſerve her huſband's directions;' it is ſuppoſed that the wife is not the perſon who brings the oblations for the wives of gods, after ſupplying the fire; for, were ſhe the agent *in the ſentence*, it would be uſeleſs to *add any term to* complete it: but her huſband appears, from the purport of the text, to be the agent. Others, however, think there is no difficulty even without ſupplying *any ſuppoſed omiſſion;* and they thus explain the phraſe: " having anointed the food with clarified butter, ſhe ſupplies her huſband with fire in honour of the deities, and alſo brings to him the oblations intended for the wives of the gods."

After ſatisfying the deities, the gueſts, the inmates of the houſe, the pupils and friends, having *alſo* ſatisfied her huſband with food, ſhe may, with his permiſſion, eat the reſidue; that is, what remains, when no other deſires to eat more of the food. The *Retnácara* explains the particle in a disjunctive ſenſe, and gives this conſtruction; with her huſband's aſſent, ſhe may eat the reſidue, or even *eat of* the food, though ſome perſons remain to be fed. Conſequently ſhe ſhould eat the reſidue when no one remains unfed; for a text forbids others eating it: " what remains *untouched* is the food of the married couple †;" and if that cannot be, a part may be reſerved. This opinion ſhould be queſtioned, for the text only directs a repaſt on the reſidue. *However*, it ſhould not be objected, that her feeding on the reſidue is poſi-

* That is, ſhe muſt perform the whole, on receiving directions for any one of connected offices.

† Similar to the texts of MENU, Chap. III. v. 116 and 117.

tively enjoined by the ſenſe of the text, in as much as others are previouſly mentioned. Lawyers hold, that ſince other inmates of the houſe, not ſpecified in this text, muſt have a repaſt, the ſenſe obtained from the terms of the text is, that ſhe muſt eat laſt.

" Water kept for her own uſe ;" water reſerved for her own purpoſes. " Having rinſed ;" having ſipped without ſwallowing. " Cleaned ;" removed foulneſs. The *Retnácara.*

The removal of foulneſs ſignifies ſcouring of the caldron with a rag or the like: conſequently the meaning is, that it ſhould be cleanſed with abundance of water.

" In the evening the ſame ſhould be repeated ;" this is explained in the *Retnácara :* at the time of evening twilight alſo, the ſame offices ſhould be repeated which are directed from the words " on the morrow again waſhing them " to the word " oblations." In the evening, or at night, ſhe muſt again waſh the caldron and ſo forth ; for another repaſt at night is not forbidden to prieſts.

Two *daily* repaſts are allowed by holy Sages to prieſts inhabiting *this* earth. *They may eat* by day, and again at night, after the firſt watch and a half, *but* before the ſecond watch.

Prieſts ſhould take their repaſt at a different time from the early hour forbidden by another text. Thus others expound the law.

" Make a wall of aſhes at the door ;" this is intended for an *auſpicious* guard of the houſehold effects. He ſubjoins an *auſpicious* preſervative for her huſband, her ſon, and herſelf ; " let her touch, therewith, her lord and the reſt ," touch them with her hand ſoiled with aſhes. " And any thing which ſhould be guarded ;" touch that alſo with aſhes. The *Retnácara,*

The Sage declares the forms to be obſerved in repoſing : not with unwaſhed feet, nor naked, nor ſoiled with orts, nor diſreſpectfully, nor arrogantly. The *Retnácara.*

That is, humbly and reſpectfully. " Let her not riſe later than the riſing of the ſun ;" let her riſe before the appearance of the ſun. " She muſt regularly clean the houſe ;" ſhe muſt ſweep the dwelling-houſe and the like, at the three *proper* hours. She muſt

muſt be ſkilled in good offices. She muſt uſe ſuch expreſſions as may pleaſe her huſband.

The *Cás'ic'handa* *:—If clarified butter, ſalt, or oil, be deficient, let not a faithful wife tell her huſband "there is none," but deſire him to procure it.

Even in the caſe of deficiency, it ſhould be ſaid, "it is increaſed." RAGHUNANDANA.

This is directed, leſt her huſband be afflicted at hearing it abruptly ſaid, "there is none." She muſt not ſit while her huſband ſtands, nor on a ſeat above his, nor gaze even at him continually. She muſt waſh his feet; alleviate pain by the preſſure of her hands; and attend him with a fan during hot weather: ſhe muſt wipe his limbs with a cloth or the like. "When his head ſhakes;" when it is tremulous: ſeeing him return fatigued with an exceſſive load brought from another town, let her meet him in the court: and, with her huſband's aſſent, ſhe muſt keep the faſts ordained on certain lunar days and the like, pay worſhip to the deities and ſo forth, and perform voluntary ablutions. From parity of reaſoning, the ſame ſhould be underſtood of duties towards her father and the reſt. Such is the ſenſe of the text (CII).

If ſhe be unacquainted with the ſenſe of this ordinance, let her learn it from her huſband's mother and the reſt, or from her huſband himſelf. If a woman, who, through inſolence or the like, does not fulfil the intention of the ordinance, though able *to perform her duties*, be chaſtiſed by her huſband with a ſmall rope or ſhoot of a cane, without infringing the ſettled uſage, no offence is in that caſe imputable to her huſband. To intimate this, a text of moral and religious law has been placed in the *Retnácara*, under a title of Judicial Procedure.

CIII.

MENU:—When the huſband has performed the nuptial

* A portion of the *Scanda purána*.

tial rites with texts of the *Véda*, he gives bliſs continually to his wife here below, both in ſeaſon and out of ſeaſon; and he will give her happineſs in the next world.

2. Though unobſervant of approved uſages, or enamoured of another woman, or devoid of good qualities, yet a huſband muſt conſtantly be revered as a god by a virtuous wife.
3. No ſacrifice is allowed to women apart from their huſbands, no religious rite, no faſting; as far only as a wife honours her lord, ſo far ſhe is exalted in heaven.
4. A faithful wife, who wiſhes to attain in heaven the manſion of her huſband, muſt do nothing unkind to him, be he living or dead.

The text of law quoted in the *Retnácara* (LXXXVIII) declares the higheſt reward of female virtue. Obſerving an excellent conduct; behaving in the virtuous manner deſcribed by HÁRÍTA and others (CII); keeping her ſenſes in ſubjection; neither looking at, nor converſing with, any other man *but her huſband*; ſuch a virtuous woman acquires renown in this world.

CIV.

MENU:—But ſhe who is faithful to her lord, from the moment when ſhe is given in marriage, through the whole period of her life, acquires the ſame abode with her huſband, even as ARUND'HATÍ *attained a heavenly manſion.*

"Who is faithful to her lord;" even after her huſband's death obſerving a virtuous conduct, and performing auſterities and the like for his ſake.

CV.

MENU:—While ſhe who ſlights not her lord, but keeps her mind, ſpeech, and body devoted to him, acquires high renown in this world, and, in the next, the ſame abode with her huſband.

"Who ſlights not her lord;" who is not diſloyal. "The ſame abode with her huſband;" here is ſuppoſed *heaven* obtained by ſacrifices and the like performed in concert with her lord.

CHANDÉSWARA.

But diſloyal women do not acquire the ſame abode, even by ſacrifices performed in concert with their lords.

The *Herivanśa*:—Fruitleſs indeed are the religious rites of immoral females, O lovely woman!

CVI.

CÁTYÁYANA, quoted in the *Ch'handóga periśiſhta*:—Solely by obedience to her lord does a woman attain all the *heavenly* abodes: returning from heaven, ſhe ſhall become the ſource of pleaſures here below.

Some remark, that the particle excludes a reference to ſacrifice: thus, even without ſacraments or the like, but through unerring fidelity to her lord, every fruit *of good actions* is obtained even by a ſimple wiſh. Others ſay, without obedience to her huſband thoſe abodes are not attained: this, which had been already mentioned, is alſo declared by CÁTYÁYANA (CVI).

CVII.

VRÍHASPATI:—The virtuous woman, who, indiſpoſed when her huſband is ſick, pleaſed when he is

is cheerful, ſqualid and pining when he is abſent, dies when he deceaſes, muſt be conſidered as *truly* faithful to her lord*.

CVIII.

VAśISHT'HA:—The abode of faithful wives, who are fond of home and truly rigid, and who have ſubdued their paſſions, ſhall be the ſame with that of their lords; but the manſions of ſhakals are aſſigned to diſloyal wives.

"The ſame with that of their lords;" they ſhall dwell together with their lords in heaven. Even though the huſband have committed ſins, they are atoned by her merit.

CIX.

MENU:—But a wife, by diſloyalty to her huſband, ſhall incur diſgrace in this life, and be born *in the next* from the womb of a ſhakal, or be tormented with horrible diſeaſes, which puniſh crimes.

Conſequently, on the ſubject of diſloyalty, MENU and VAśISHT'HA concur.

CX.

CÁTYÁYANA, in the *Ch'handóga periś'iſhta:*—To what hell goes not a woman who neglects her lord through deluſion of mind? With difficulty *again* attaining human life, what pain ſuffers ſhe not?

CXI.

SANC'HA and LIC'HITA:—While nouriſhing her infant

* Cited in Book V, as a text of HA'RÍTA.

fant at her breaſt, let her avoid onions, fleſh-meat, and other forbidden diet, *reflecting*, "my body is *the* food *of my infant:*" through that perſonality is a *Bráhmana* mixed *with the maternal body;* an embryo is indeed produced from what is eaten and drunk by his mother.

From the tranſmiſſion of food eaten to the infant, he might be degraded; therefore, it is an offence to eat onions and the like.

CXII.

MENU:—But ſhe who, having been forbidden, addicts herſelf to intoxicating liquor even at jubilees, or mixes in crouds at theatres, muſt be fined ſix *ractícás* of gold.

"Even at jubilees;" and "having been forbidden:" the text ſuppoſes perſons to whom the law *in general* permits the uſe of intoxicating liquor. VAŚISHT'HA, quoted in the *Retnácara*, propounds a law relative to thoſe who are never permitted to drink ſpirituous liquor.

CXIII.

VAŚISHT'HA, quoted in the *Retnácara:*—That woman, of the prieſtly claſs, who ſhall drink intoxicating liquor in this world, the deities will not admit, *in the next*, to the ſame abode with her lord; loſing purity, ſhe remains in this world, and is born a leech in water, or a ſow.

Here "a woman of the prieſtly claſs" is mentioned indefinitely: and, a fine having been denounced in the preceding text, againſt drinkers of intoxicating liquors, a fine ſhould be alſo underſtood in this caſe; and it muſt be proportioned to the offence.

CXIV.

YÁJNYAWALCYA:—A woman of the ſacerdotal claſs who has drunk inebriating liquors, attains not the manſion of her lord; ſhe is born again, in this world, a bitch, a female vulture, or a ſow.

CXV.

YAMA:—That woman of the ſacerdotal claſs who addicts herſelf to drinking ſpirituous liquor in this world, the deities admit not, *in the next*, to the ſame abode with her lord; ſhe remains impure in this world, becoming a bitch, a female aſs, or a ſow.

SECT. II.—*On the Conduct of Women whose Husbands are absent.*

CXVI.

MENU:—While her huſband, having ſettled her maintenance, reſides abroad, let her continue firm in religious auſterities; but if he leave her no ſupport, let her ſubſiſt by *ſpinning and other* blameleſs arts *.

While he reſides abroad, after ſettling the means of her ſupport, let her ſubſiſt on that maintenance. CHANDÉSWARA. "Firm in religious auſterities;" abſtemious in reſpect of food and the like: and this ſhould be underſtood of both caſes.

CXVII.

* This text has been already cited at V. xlv, 2.

CXVII.

YÁJNYAWALCYA:—A woman whoſe huſband reſides abroad muſt avoid ſports, perſonal decoration, crouds and jubilees, laughter, and viſits to the houſes of ſtrangers.

"Sports;" playing at ball and the like: this ſhould be ſhunned. "Perſonal decoration;" uſing the fruit of the *ámalaca* and the like: by ſuch embelliſhments the deſires of other men are *excited*. Although by prohibiting the reſort of women, whoſe huſbands are abſent, to crouded ſhows and jubilees, it is permitted to thoſe whoſe huſbands are near; yet it ſhould only be practiſed with caution: and one whoſe huſband is abſent ſhould at no time reſort there, leſt thoughts of men be excited, and infamy be the conſequence of conducting herſelf by her own *mere* pleaſure.

"Sports;" play at ball or other external games. "Laughter;" laughing in publick. SÚLAPÁNI.

CXVIII.

VRÍHASPATI:—A wife, in the abſence of her lord, ſhould not uſe dreſs, behold dances, hear ſongs, reſort to crouded ſpectacles and jubilees, nor uſe fleſh-meat and inebriating liquors.

CXIX.

VISHNU:—During the abſence of her huſband, a woman muſt not uſe dreſs, nor reſort to the houſes of ſtrangers, nor ſtand at the door or window.

"Muſt not uſe dreſs;" muſt not employ decoration. CHANDÉSWARA.

The

The terms are explained by AMERA ſynonymouſly, ‘ embelliſhment of dreſs.’

Decoration may ſignify decking the hair. Although a woman whoſe huſband is near has already been forbidden to ſtand at the door or the like, ſhe whoſe huſband is abſent is likewiſe forbidden, that ſhe may not at any time ſtand there; or to ſhow the greater heinouſneſs of the offence.

CXX.

SANC'HA and LIC'HITA:—Amongſt all his wives, let her of the prieſtly claſs guard her *own* conduct during the abſence of the huſband; let the father and mother guard the reſt, or, after them, a wife of the military claſs. No dependent women of a family, whoſe huſbands are abſent, ſhould uſe litters, behold dancers, gaze at exhilarating pictures, decorate their perſons, reſort to the garden, drink *ſpirituous liquors* openly, gratify themſelves with ſavoury drinks and food, ſport at ball, wear perfumes, garlands or jewels, rub their teeth *with colouring ſubſtances*, or *their eyelids with* collyrium, nor uſe mirrors, nor any embelliſhments of dreſs.

“ Amongſt all his wives;” among the ſeveral wives of one man, a *Brâhmanì* and others, ſhe who is of the prieſtly claſs ſhould guard her own conduct. The father and mother ſhould watch the conduct of the reſt; or, if they be not preſent, the wife of the military claſs ſhould guard her own conduct and that of both the other wives. The *Retnácara.*

The remainder of the text is thus explained; all dependent women, whoſe huſbands are abſent, may not practiſe the ſeveral things enumerated, from the uſe of litters, to that of embelliſhments in dreſs. Whence is the ſuggeſtion of ſeveral wives of one man; for there is no objection to receive the text as a rule concerning women of the four claſſes, though ſeverally married to different huſbands? From the inferible ſenſe of the expreſſion,

“ or,

" or, after them, the wife of the military claſs," which ſignifies, that, on failure of the father and mother, the wife of the military claſs ſhall guard the conduct of the reſt, it is deduced, that the woman of the military claſs and thoſe of the commercial and ſervile claſſes are wives of the ſame huſband: and thoſe three being found to be wives of the ſame man, it is conſiſtent with the ſubject to ſuppoſe the *Brâhmanì* married to the ſame huſband. What then is the rule concerning a woman of the military claſs married to a military man and ſo forth? By parity of reaſoning, the *Cſhatriyâ* ſhould guard her own conduct: but, if women of the commercial or ſervile claſs, married to a man of equal rank, cannot guard themſelves, the father and mother ſhould guard them; for it is directed that wives ſhould be guarded by any practicable means.

Others ſay, the conſtruction is this: " amongſt all the wives, let the *Brâhmanì* guard the conduct of others, and her own, (as is literally expreſſed;) after *her*, if ſhe be incapable of that office, the father and mother; or, on failure of theſe, the wife of the military claſs.

" Litter;" a ſmall litter, or *dôlâ*. The *Retnâcara*.

" Dances;" exhibitions of dancing. " Decorate their perſons;" adorn themſelves. " Drink openly;" drink inebriating liquors or the like in a publick place. " Gratify themſelves with ſavoury drinks and food;" drink ſweetened water, or eat confects or the like. " Rub their teeth;" for cleanlineſs it may be done: but rubbing the teeth with tinging ſubſtances, for the purpoſe of embelliſhment, we think, is forbidden. The conſtruction is this: the uſe of litters and the reſt, by women whoſe huſbands are abſent, is not *permitted*.

CXXI.

HÁRÍTA:—In *the* abſence *of her huſband*, a woman ſhould not adorn nor unbind her locks.

Some remark, that the prohibition of unbinding her locks does not prevent her bathing; but ſhe ſhould not expoſe her hair unbound. " Adorn;" the conſtruction *of the ſentence* refers this

alſo to her locks of hair. CHANDÉSWARA obſerves, that the text, again forbidding women whoſe huſbands are abſent to do things already forbidden to women who have no huſband, enforces the prohibition.

CXXII.

YÁJNYAWALCYA:—She who is deprived of her huſband ſhould not reſide apart from her father, mother, ſon, or brother, from her huſband's father or mother, or from her own maternal uncles; elſe ſhe becomes infamous.

She alſo, whoſe huſband reſides abroad, ſhould, if poſſible, take the protection of theſe perſons: if ſhe be alſo deprived of her ſons and the reſt, ſhe muſt not recur to her father's family while there are kinſmen of her lord; for this text is referible to women whoſe huſbands have deceaſed. Yet it may be *alſo* admitted *under this head;* for ſhe alſo whoſe huſband reſides abroad has no companion, and it is neceſſary that her conduct ſhould be guarded. But the perſon who ſhall have authority over a widow, is appointed by the law. The perſon who ſhall have authority over the wife of a man reſiding abroad, ſhould, in the firſt inſtance, be ſelected by her lord; on failure of that, he is appointed by the law. This diſtinction ſhould be maintained.

CHAP. III.

ON

THE DUTIES

OF

A FAITHFUL WIDOW.

SECT. I.—*On Dying with or after her Husband.*

CXXIII.

ANGIRAS:—That woman who, on the death of her huſband, aſcends the *ſame* burning pile with him, is exalted to heaven, as equal in virtue to ARUNDHATÍ.

2. She who follows her huſband *to another world*, ſhall dwell in a region of joy for ſo many years as there are hairs on the human body, or thirty-five millions.

3. As a ſerpent-catcher forcibly draws a ſnake from his hole, thus, drawing her lord *from a region of torment*, ſhe enjoys delight together with him.

4. The woman who follows her huſband *to the pile*, expiates the ſins of three generations, on the paternal and maternal ſide, of that family to which ſhe was given while a virgin.

5. There, having the beſt of huſbands, *herſelf* beſt *of women*, enjoying the beſt delights, ſhe partakes of bliſs with her huſband *in a celeſtial abode*, as long as fourteen INDRAS reign.
6. Even though the man had ſlain a prieſt, or returned evil for good, or killed an intimate friend, the woman expiates thoſe crimes: this has been declared by ANGIRAS.
7. No other effectual duty is known for virtuous women, at any time after the death of their lords, except caſting themſelves into the ſame fire.
8. As long as a woman, *in her ſucceſſive tranſmigrations*, ſhall decline burning herſelf, like a faithful wife, on the *ſame* fire with her deceaſed lord, ſo long ſhall ſhe be not exempted from *ſpringing again to life in* the body of ſome female animal.
9. When their lords have departed at the *fated* time of *attaining* heaven, no other way but entering the *ſame* fire is known for women whoſe virtuous conduct and whoſe thoughts have been devoted to their huſbands, and who fear the dangers of ſeparation.

" Burning pile (CXXIII 1);" literally, ſeat of ſacrifice: her huſband's burning pile. This is called *ſahamarana*, or dying with *her huſband*; for it coincides with the text " let her aſcend " the burning pile, embracing *the corpſe of* her huſband *already* " placed there." This text, however, may be indifferently applied to *anumarana*, or dying after *her huſband*. " On the human body (CXXIII 2);" on the body of that woman, or on the human body in general. " Follows;" goes *to another world* immediately after her huſband; " *to another world*" muſt be ſupplied: who goes thither, either by the forms of *ſahamarana*, dying with, or *anumarana*, dying after, *her huſband*. Nor does ſhe alone enjoy heaven, ſhe enjoys it with her huſband (CXXIII 3). Nor

does ſhe atone for herſelf and huſband only, but for others alſo (CXXIII 4). "That family to which ſhe was given while a "virgin;" that is, her huſband's family.

It is ſaid, ſhe ſhall enjoy heaven. For what ſpace of time ſhall ſhe enjoy bliſs? The Sage declares the period (CXXIII 5). "Having the beſt of huſbands;" whoſe huſband is abſolutely beſt; an appoſition, in which the middle term is rejected. Or the word "huſband" itſelf implies the aſſeveration; conſequently, as the divinity is venerated with the higheſt tokens of adoration, ſo is her huſband remembered with veneration. Hence, herſelf ſuperior to other women, delighting in the beſt path, or that which is declared by the *Vēda*, ſhe partakes of bliſs, &c.

If her huſband had ſlain a *Brāhmana*, how ſhould ſhe enjoy heaven with him without partaking of his ſin? The Sage replies *to that queſtion* (CXXIII 6). "This has been declared by ANGIRAS;" the text propounded belongs to ANGIRAS. Since the guilt of ſlaying a *Brāhmana* is effaced, doubtleſs the guilt of killing a cow and the like is alſo atoned. Or the particles "or" are uſed in an affirmative ſenſe.

Since cremation of her huſband's body would be forbidden, had he, in his then exiſtence, ſlain a prieſt; *the ſenſe muſt be, that* one who had perpetrated that crime in a former exiſtence, is delivered by his wife dying with him. RAGHUNANDANA.

Conſequently the meaning is this: ſince the penalties for the murder of a *Brāhmana*, perpetrated in a former exiſtence, have been ſuffered, cremation of his preſent body is not forbidden.

VÁCHESPATI BHATTÁCHÁRYA.

According to this opinion, the cremation of a body ſlightly infected with leproſy is allowed. But, although the body of a ſinner in the firſt degree, whoſe ſin is unknown, and yet unatoned by ſuffering the penalty of it, is to the ſight actually burned; yet the reward of dying with a huſband is not in ſuch a caſe attained. But others think, if the body of her huſband, though a ſinner in the firſt degree, but whoſe ſin was unknown, be any-how burned, her reward is attained: for the literal ſenſe of the ordinance, "caſting herſelf into the flames after embracing the corpſe of her huſband," cannot be ſet aſide; and a text declares pure, what is not known to be defiled, (MENU, Chap. V, v. 127). This queſtion would require much diſcuſſion.

The Sage celebrates this act of dying with her husband (CXXIII 7). This is the best duty for virtuous women, averse from the enjoyment of other men and the like: *but*, of women who are not averse from intercourse with other men, the production of a son is the *principal* duty.

Others say, *the performance of* this duty confirms the attainment of rewards by those virtuous women who are described by VRĬHASPATI (CXVIII). Others again argue, from the text of the *Mahábhárata*, which only directs this expiation for women who have been averse from their husbands, that rewards are fully attained by others, namely by virtuous women, if, inasmuch as is possible, they deviate not from the path of conduct prescribed by HÁRÍTA and others (CVII).

CXXIV.

The *Mahábhárata*:—Those who have slighted their former lord through an evil disposition, or have remained at all times averse from their husbands,

If they follow their lords at the *proper* time, in such a mode, are all purified from lust, wrath, fear, and avarice.

"Whose virtuous conduct, &c." (CXXIII 9); whose conduct and thoughts have been amiable, and devoted to their husbands, and who are fearful of the dangers or of the wound growing from separation. "Their lords;" their husbands. "Heaven;" a celestial mansion. The *Retnácará*.

Others explain the terms 'who had husbands to whom their conduct and thoughts were devoted, or whose conduct and thoughts were devoted to their husbands.'

VYÁSA expressly propounds *anumarana*, or dying after her husband *on a subsequent day*.

CXXV.

VYÁSA:—Learn the power of that widow, who, hearing

hearing that her huſband has deceaſed, and been burned in another region, ſpeedily caſts herſelf into the fire:

2. Though he have ſunk to a region of torment, be reſtrained in dreadful bonds, have reached the place of anguiſh, be ſeized by the imps of YAMA,
3. Be exhauſted of ſtrength, and afflicted and tortured for his crimes; ſtill, as a ſerpent-catcher unerringly drags a ſerpent from his hole,
4. So does ſhe draw her huſband *from hell*, and aſcend to heaven by the power of devotion. There, with the beſt of huſbands, lauded by the choirs of APSARAS.
5. She ſports with her huſband, as long as fourteen INDRAS reign.

In that text, to prevent her following him after a long ſpace of time, it is ſaid, "ſpeedily." Her "power," what ſhe is able to accompliſh: ſuch is the power of a woman who has entered the fire, that ſhe delivers her lord, even though he be tainted with ſin.

A woman dying with her huſband, embraces his corpſe, and caſts herſelf into the ſame fire: does this woman embrace the fire alone?

CXXVI.

The *Brahme-puràna*:—No other way is known for a virtuous woman, after the death of her huſband; the ſeparate cremation of her huſband would be loſt, *to all religious intents*.

2. If her lord die in another country, let the faithful wife place his ſandals on her breaſt, and, pure, enter the fire.
3. The faithful widow is pronounced no ſuicide by

the *recited* text of the *Rĭgvéda:* when three days of mourning are paſſed, ſhe obtains legal obſequies.

" The ſeparate cremation of her huſband ;" the outward ceremony of burning his body. " His ſandals ;" mentioned indefinitely, intending only, ſays RAGHUNANDANA, ſomething which had belonged to her huſband. " By the text of the *Rĭgvéda ;*" by the ſolemn text recited from the *Rĭgvéda**. So the commentators: but others ſay, ſhe is no ſuicide ; becauſe *ſahamarana* and *anumarana* are declared in the *Rĭgvéda ;* that is, ſhe partakes not of the ſinful taint ariſing from ſelf-murder: as in ſlaying cattle which is authorized by the *Véda*, ſo in the act of ſuicide authorized by it there is no ſin.

CXXVII.

Vrĭhat Nárediya purána :—Mothers of infant children, pregnant women, they who have not menſtruated, and they who are actually unclean, aſcend not the funeral pile, O lovely princeſs!

Some explain females who have not menſtruated, young girls: others expound the term, women whoſe pregnancy may be ſuſpected; and ſay, theſe are mentioned by the ſame rule by which one name of kine may ſignify cattle of that ſort, and a ſimilar term in the ſame ſentence may denote cows only.

" Princeſs ;" addreſſing the mother of SAGARA.

RAGHUNANDANA.

CXXVIII.

VRĬHASPATI :—The mother of an infant child may not relinquiſh the care of her infant to aſcend *the pile ;* nor *may* a woman in her courſes, nor one who *lately* brought forth a child, *burn herſelf with her*

* This, I ſuppoſe, alludes to the ſolemn text of the *Rĭch*, recited when a widow caſts herſelf into the flames.

her huſband; a pregnant widow muſt preſerve the embryo.

But if the infant can be nurtured by any other perſon, in that caſe the mother is entitled *to follow her deceaſed huſband.*

RAGHUNANDANA.

Thus the general prohibition concerning the mother of an infant, delivered in the text of the *Nâredîya-purâna*, is limited by the text of VRĬHASPATI. For inſtance, the mother of a very young infant, and a woman unclean after child-birth, may not aſcend *the funeral pile.* The uncleanneſs after child-birth is declared, in the following text, to laſt twenty nights after bearing a ſon, and a month after bearing a daughter.

The huſband may employ, in every ſort of buſineſs, his wife who has borne a ſon, when ſhe has bathed after twenty nights from the child-birth; and her who has borne a daughter, when ſhe has bathed after a month.

But in all caſes a woman of the ſervile claſs partakes of impurity for one month *only*, to avoid too great a diſparity. In either caſe, if the daughter die within the month, impurity ceaſes at that very moment: but if a male child die within the period of impurity ordained for the ſeveral claſſes *by reaſon of the dead*, the uncleanneſs continues to the end of thoſe periods.

MENU:—A man of the ſacerdotal claſs becomes pure in ten days; of the warlike, in twelve; of the commercial, in fifteen*; of the ſervile, in a month.

Hence, after the period of uncleanneſs by reaſon of child-birth, if the infant were a little grown, and could be nurtured by another, a woman

* Tranſlation of MENU, Chapter V, v. 83, where an error of the preſs has ſubſtituted five for fifteen.

a woman *then* widowed, may go with *her huſband to another world:* and a woman of the ſervile claſs may aſcend the pile within a month after child-birth, if her impurity had ceaſed *when her huſband deceaſed*, in conſequence of another cauſe of uncleanneſs intervening.

On full conſideration of the whole text, it appears that all the wives of a *Brâhmana*, or other man, deſiring particular benefits for themſelves and their huſband, are entitled to *die with or after him*, either *in* the forms of *ſahamarana* or *anumarana*, unleſs they be pregnant, or mothers of infant children, or the like. In this opinion, delivered in the *Retnâcara*, RAGHUNANDANA does not concur; for a woman of the ſacerdotal claſs is forbidden to aſcend a ſeparate pile, by the *following* text of GÓTAMA, cited in the *Mitâcſharâ* from the commentary on YÁJNYAWALCYA compoſed by DÉVABÓDHA.

CXXIX.

GÓTAMA:—A woman of the ſacerdotal claſs cannot go *with her huſband to another world*, aſcending a ſeparate pile.

A diſtinction is propounded in reſpect of a woman unclean by reaſon of her menſtrual diſcharge.

CXXX.

The *Bhaviſhya-purâna*:—If, indeed, *her* huſband die after the third night of her uncleanneſs, the corpſe, O twice-born men, ſhould be kept one night, that ſhe may follow him in death.

CXXXI.

VYÁSA:—If the faithful wife reſide at a place which may be reached in one day, and notice be given *her of her huſband's death*, the ceremony of burning

ing her lord ſhould not be performed ſo long as her arrival may be *expected*.

Thus, after the huſband's death, notice ſhould be ſent, and the ceremony of burning her lord be performed on the next day when ſhe can be no longer expected to come.

SECT. II.—*On the Duties of Widows choosing to survive their Husbands.*

CXXXII.

VRĬHASPATI:—A wife is conſidered as half the body *of her huſband*, equally ſharing the fruit of pure and impure acts: whether ſhe aſcend *the pile* after him, or ſurvive for the benefit of her huſband, ſhe is a faithful wife*.

By this it is declared that faithful wives may live after the death of their huſbands. The following text ſhows the conduct to be obſerved by them:

CXXXIII.

VISHNU:—After the death of her huſband, a wife muſt practiſe auſterities, or aſcend *the pile* after him.

Even her practice of auſterities is beneficial to her huſband. The auſterities are explained by RAGHUNANDANA: 'continence, and refraining from the leaf of betel and the like.'

CXXXIV.

* The firſt hemiſtich is again cited as part of another verſe, Book V, ṿ. 399 1.

CXXXIV.

PRACHÉTAS:—An anchorite, a ſtudent in theology, and a widow, muſt avoid the leaf of the betel, inunctions, and feeding from veſſels of zinc.

Inunction *(abhyanjana)* in its accepted ſenſe of rubbing with oil: that only is forbidden according to RAGHUNANDANA. It is mentioned in the *Áyur Véda*, and called *abhyanga*.

The *Áyur Véda*:—When oil is applied to the crown of the head, and reaches all the limbs, if both arms be ſufficiently wetted with water, it is called *abhyanga*.

2. If the oil ſparingly reach the limbs, and the arms be not ſufficiently wetted, it is *máſhti*, a diſtinct inunction *(abhyanga)* intended for the head *(maſtaca)* and the reſt of the limbs.

Since there is no proof of coincidence between civil law and the ſcience of *prolonging* life, the word *abhyanjana* may be taken in its derivative ſenſe of rubbing with oil; and inunction in general is thus forbidden. Others again hold, that betel leaf is mentioned indefinitely; for another ordinance prohibits fiſh and the like: they explain *abhyanjana*, embelliſhing the eyes with collyrium; and take it in a large ſenſe, comprehending the decoration of hair and the like.

CXXXV.

Smṛiti.—Only one meal each day ſhould ever be made *by a widow*, not a ſecond repaſt by any means; and a widowed woman, ſleeping on a bed, would cauſe her huſband to fall *from a region of joy*:

2. She muſt not again uſe perfumed ſubſtances: but daily

daily make offerings for her huſband, with *cuśa* graſs, *tila*, and water.

3. In the month of *Vaiſác'ha*, *Cártica*, and *Mágha*, let her obſerve ſpecial faſts, perform ablutions, make gifts, travel to places of pilgrimage, and repeatedly utter the name of VISHNU.

She muſt make thoſe offerings, if there be no ſon, grandſon, or the like. So the *Párijáta*; but, in fact, the offerings may be made although there be ſuch perſons.

CXXXVI.

The Matſya purána declares veneration due to faithful women:—Therefore ſhould faithful women be venerated like deities by all men; *for*, through their merits, the three worlds are governed by the king.

Through their merits the king governs and protects the three worlds. Another reading ſubſtitutes *yaśah'sriyam* for *jagat trayam*: "his renown is increaſed, and the king obtains proſperity." Veneration ſhould be ſhown them by reſpectful ſpeeches, and gifts of things deſired and ſo forth.

Theſe qualities of a faithful wife are cited by CHANDÉSWARA on the ſubject of the Widow's title to the heritage of a man who leaves no ſon.

CXXXVII.

HÁRÍTA*:—Leaving her huſband's favourite abode, keeping her tongue, hands, feet, and *other* organs in ſubjection, ſtrict in her conduct, *all* day mourning her huſband, with harſh duties, devotion, and faſts

* I omit the text and commentary of another quotation from the ſame author, which is wholly unconnected with the preſent ſubject. T.

faſts to the end of her life, a widow victoriouſly gains her huſband's abode, and repeatedly acquires the ſame manſion with her lord, as is thus declared: "That faithful woman who practiſes harſh duties after the death of her lord, cancels all her ſins, and acquires the ſame manſion with her lord."

Is not a *celeſtial* abode unattainable by a woman who has no ſon, even though ſhe rigidly avoid ſenſuality; for it is learned from a text of the *Véda* quoted by VA'SISHT'HA, that "one who has no ſon attains not the celeſtial world;" and, in that text, there is no reſtriction of childleſs men? It is therefore beſt for a widow to obtain a ſon procreated according to the law of appointment for raiſing up offſpring; and forbearance of ſenſuality is not infringed by coition for that purpoſe. VRI'HASPATI confutes this inference.

CXXXVIII.

VRI'HASPATI:—Strict in auſterities and rigid devotion, firm in avoiding ſenſuality, and ever patient and liberal, a widow attains heaven, even though ſhe have no ſon.

Such is the great efficacy of her auſterities. MENU likewiſe forbids the acceptance of an appointment *to raiſe up male iſſue*, whether through an eager deſire of bearing children, or for the ſake of preſerving her own life.

CXXXIX.

MENU:—Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceaſed, even pronounce the name of another man.

2. Let her continue till death forgiving all injuries, performing

performing harſh duties, avoiding every ſenſual pleaſure, and cheerfully practiſing the incomparable rules of virtue, which have been followed by ſuch women as were devoted to one only huſband.

Thus the deſire of *intercourſe* with another man, *after the death of her huſband*, for the ſake of preſerving her own life, is obviated.

CXL.

MENU :—Many thouſands of *Bráhmanas* having avoided ſenſuality from their early youth, and having left no iſſue in their families, have aſcended, *neverthleſs*, to heaven.

This is mentioned by way of illuſtration.

CXLI.

MENU :—And, like thoſe abſtemious men, a virtuous wife aſcends to heaven, though ſhe have no child, if, after the deceaſe of her lord, ſhe devote herſelf to pious auſterity.

Conſequently, a region of joy is attained, without leaving a ſon, by thoſe who voluntarily practiſe auſterities, and abſtain from conjugal embraces; but only if a ſon be born is it attained by thoſe who remain in the order of a houſekeeper. Hence it is ſaid, "having avoided ſenſuality from their early youth;" and, in the text which will be quoted from YAMA, "ſuperior to ſenſual appetites."

CXLII.

MENU :—But a widow who, from a wiſh to bear children, ſlights her *deceaſed* huſband *by marrying again*,

again, brings diſgrace on herſelf here below; and ſhall be excluded from the ſeat of her lord.

She does not attain the ſeat of her lord, for which purpoſe alone ſhe wiſhes to bear children; therefore, ſhe ought not to ſlight her *deceaſed* huſband *by marrying again*.

CXLIII.

MENU:—Iſſue begotten on a woman by any other *than her huſband*, is here declared to be no progeny of her's; no more than a child begotten on the wife of another man belongs to the begetter: nor is a ſecond huſband allowed, in any part *of this code*, to a virtuous woman.

A child begotten on the wife of another perſon belongs not to the man *who begot the child*: this alſo is mentioned by way of illuſtration.

CXLIV.

YAMA:—Let her continue, as long as ſhe lives, performing auſtere duties, avoiding every ſenſual pleaſure, and cheerfully practiſing thoſe rules of virtue which have been followed by ſuch women as were devoted to one *only huſband*.

2. Neither in the *Véda*, nor in the ſacred code, is religious ſecluſion allowed to a woman; her own duties, practiſed with a huſband of equal claſs, are indeed her religious rites: this is a ſettled rule.

3. Eighty-eight thouſand holy Sages of the ſacerdotal claſs, ſuperior to ſenſual appetites, and having left no iſſue in their families, have aſcended, *nevertheleſs*, to heaven.

4. Like

4. Like them, a *betrothed* damſel, become a widow, and devoting herſelf to pious auſterity, ſhall attain heaven, though ſhe have no ſon: this, MENU, ſprung from the Self-exiſtent, has declared.

"Women devoted to one only huſband;" *literally*, wives of one only. Here damſel ſignifies a married or betrothed woman. The *Retnácara*.

CXLV.

CÁTYÁYANA:—Though her huſband die guilty of many crimes, if ſhe remain ever firm in virtuous conduct, obſequiouſly honouring her ſpiritual parents,

2. And devoting herſelf to pious auſterity after the death of her huſband, that faithful widow is exalted to heaven, as equal in virtue to ARUNDHATÍ.

The meaning is; let her not go even to a better huſband, though ſhe know that her lord died guilty of heinous crimes. The inference is this; ſince the text of MENU forbids the procreation of a ſon on the widow of a kinſman to gratify her wiſh to bear children, ſhe muſt not have recourſe to another man through a wiſh to leave iſſue; ſhe may only receive the embraces of another, if ſhe be duly authorized by her huſband or other competent perſon. Accordingly it is familiarly known from the *Bhárata* and other works, that the wife of PÁNDU, by command of her huſband, during his life-time, received the embraces of DHERMA, VÁYU and 'SACRA*. This ſubject ſhould be examined by the wiſe.

Such are the duties of a woman whoſe huſband is deceaſed.

* A title of INDRA.

CHAP. IV.

ON

INCONTINENCE.

SECT. I.—*On the Appointment of a Wife to raise up Offspring.*

CXLVI.

MENU, quoted in the *Retnácara*:—On failure of iſſue by the huſband, *if he be of the ſervile claſs*, the deſired offspring may be procreated, either by his brother or ſome other *ſapinda*, on the wife who has been *duly* authorized *.

CXLVII.

Smrtit:—A wife duly authorized by her ſpiritual parents, through a wiſh that male iſſue ſhould be obtained, may go to her huſband's brother, and he may approach her until a ſon be produced:

2. But, when a ſon is begotten, he muſt refrain; otherwiſe duty is violated.

3. Sprinkled with clarified butter, or anointing his limbs

* See the gloſs on this text, cited again V. CCXXIX, Book V.

† NAREDA. See Book V, in the gloſs on V. CCXXXIII.

limbs with expreſſed oil, averting his face from her's, and ſhunning the contact of limb with limb,

4. A younger *or an elder* brother, authorized by ſpiritual parents, may approach his brother's wife for the ſake of offspring, that the family may be perpetuated, and not through amorous deſire.

5. If there be no ſpiritual parent living, he may be directed by the king, on the failure of the family; then, by his command, he may inform the woman and approach *her*,

6. *Though conſidered as* his daughter-in-law, with purity, in the mode above mentioned, once in the ſeaſon for procreating ſons, and until ſhe conceive: when pregnant, ſhe is even *as* his daughter-in-law.

7. Afterwards, if the man or woman conduct themſelves otherwiſe, through carnal deſire, they both ſhall be amerced by the king; elſe juſtice is violated.

"The wife who has been duly authorized (CXLVI);" by her ſpiritual parents, muſt be ſupplied. The conſtruction of the other phraſe is this: 'the deſired offspring may be procreated.' "A wife duly authorized" (CXLVII); that is, for the neceſſary purpoſes of the appointment. "Duty is violated" (CXLVII 2); there is a failure in religious duty. "Younger brother" (CXLVII 4); mentioned generally, comprehending alſo an elder brother. "May be directed by the king" (CXLVII 5); hence it is to be underſtood, that the king is alſo qualified to make ſuch an appointment. "Inform the woman;" teach her the *general* illegality of receiving the careſſes of other men, and the *particular* legality of an appointment to raiſe up offspring. "His daughter-in-law;" his brother's wife, *conſidered as* ſimilar to a daughter-in-law.

CXLVIII.

YAMA :—Silent, in a dark night, *let the appointed kinſman approach* his brother's wife, when ſhe has bathed after her courſes, careful that ſhe perceive not the odour and contact of the hair of his head, beard, nails, and hair of his body ;

2. Dreſſed in a ſingle garment, his limbs anointed with clarified butter, not perfumed, grave and ſad, averting his face from her's, and ſhunning the contact of limb with limb,

3. He muſt endeavour to effect pregnancy ; but, when that is effected, he muſt refrain : let him not approach her, if ſhe have iſſue, nor after a ſon has been begotten.

4. *The king* ſhould cauſe the auſpicious ceremony for a happy delivery, and all other ſolemn rites, to be performed by thoſe who deſire offſpring for their brother, and obſequies for their anceſtors.

" Dark ;" obſcure : it is thus forbidden to make known his features. " Grave ;" not indulging amorous joy. " When a ſon has been begotten, *the huſband's brother* muſt perform the auſpicious ceremonies for a happy delivery ;" ſuch is the conſtruction *of the ſentence*, and the cauſal has the original ſenſe *of the verb*, as in the example RÁMA governed the realm. " By thoſe *brothers* who deſire offſpring, &c. ;" that ſhould be performed, may be ſupplied. Since the term, expreſſed in the plural number, ſuggeſts, that there is no reſtriction, it may be performed by any one of thoſe brothers.

On this *text* CHANDÉSWARA remarks, that the king ſhould cauſe the ceremonies for a happy delivery and the like to be performed, by the intervention of the brothers of the deceaſed, who deſire offſpring for their brother and obſequies for their anceſtors ;

ſuch is the ſenſe; and plurality is not here determinate; the law ſubſiſts *in full force*, though one brother only be living.

CXLIX.

YÁJNYAWALCYA:—Sprinkled with clarified butter, let a brother of her huſband, a kinſman who offers funeral cakes to the ſame anceſtor, or one who is deſcended from the ſame original ſtock, being authorized by ſpiritual parents, through a wiſh that a ſon may be produced, approach a woman who has no ſon, at the proper ſeaſon.

2. Let him approach her until ſhe may poſſibly be pregnant; but if he act otherwiſe, he ſhall be degraded *from his claſs*. A ſon begotten in this mode ſhall be a *Cſhétraja*, or ſon begotten on the wife *of a kinſman*.

"Being authorized by ſpiritual parents:" this intends the aſſent of the deceaſed huſband's father or the like, expreſſed in this form, "beget a ſon on her;" or thus, "let him beget a ſon on her." But SÚLAPÁNI thinks it implied, that the huſband's brother ſhould likewiſe be authorized by his own ſpiritual parents, ſince it is directed that the woman alſo ſhould be authorized by her ſpiritual parents. Others infer, from the words "through a wiſh that a ſon may be produced," which they explain 'a wiſh for a ſon who ſhall belong to himſelf,' that a man deſiring male iſſue for himſelf may approach a widow; but as the text mentions "a woman who has no ſon," *the child ſo begotten* is likewiſe *conſidered as* the offſpring of her huſband: accordingly it bears another import.

"He is legally heir to, and offers the funeral cake for, both *fathers*."

But this only takes place when it has been agreed that he ſhall be *conſidered as* ſon of both.

That interpretation does not coincide with the opinion of Súlapáni; for he reads the laſt meaſure of the verſe, "ſhall be "ſon of the woman's huſband*:" and the words "through a wiſh that a ſon may be produced," may be any-how explained in another ſenſe.

CL.

Menu:—The firſt object of the appointment being obtained according to law, both *the brother and the widow* muſt live together like a father and a daughter by affinity.

After a ſon is begotten, they muſt behave as brother's wife and brother's father-in-law, and the like, not as huſband and wife.

Sect. II.—*On the same; and on such Husbands as may be forsaken by their Wives without any consequent Penalty.*

CLI.

Dévala:—A huſband may be forſaken by his wife, if he be an abandoned ſinner, or an heretical mendicant, or impotent, or degraded, or afflicted with phthiſis, or if he have been *long* abſent in a foreign country.

"Abandoned ſinner;" expelled, in the legal form, from virtuous intercourſe. "A mendicant;" addicted to mendicity in a form unauthorized by the law. "Afflicted with phthiſis;" ſuffering under the diſeaſe *called* phthiſis. The *Ratnácara*

"If he be abſent in a foreign country;" if he have gone to a foreign region.

CLII.

* *Cſhétricasya bhavét ſutah*, inſtead of *Cſhétrajas tu bhavét ſutah*.

CLII.

DÉVALA :—Whether *ſuch* a huſband be alive or dead, his wife may take another lord, for the ſake of obtaining progeny, not through female independence.

By this, an appointment, in the form above mentioned, is authorized.

CLIII.

DÉVALA :—Eight years let a woman of the ſacerdotal claſs wait for her abſent lord ; or four years, if ſhe have borne no children : after theſe periods ſhe may unite herſelf to another man :

2. Let a woman of the military claſs wait ſix years ; or three years, if ſhe have borne no children : and a woman of the commercial claſs, if ſhe be a mother, *muſt wait* four years ; but two only, if ſhe be childleſs :

3. For women of the ſervile claſs no period is ordained, nor do they violate *their* duty *by an early ſecond marriage ;* but, for thoſe eſpecially who have borne no children, the ſettled rule preſcribes one year.

4. Theſe periods are declared for the wives of abſent men, if there be no intelligence *concerning them ;* but if it be heard that the huſband is living, theſe periods muſt be doubled.

5. If they have children, this conduct is enjoined to women by the lord of created beings ; hence, if ſuch women marry another *huſband*, it is no offence.

" Let a woman of the military claſs wait ſix *years*;" if ſhe have borne children; it muſt be ſo underſtood. The *Retnácara.*

On this ſubject MENU alſo has ſaid ſomething:

CLIV.

MENU:—If he live abroad on account of ſome ſacred duty, let her wait for him eight years; if on account of knowledge or fame, ſix; if on account of pleaſure, three: *after theſe terms have expired, ſhe muſt follow him.*

A huſband abſent on account of ſome ſacred duty, ſuch as executing the command of his ſpiritual preceptor, or the like, muſt be expected by his wife during eight years; after that term has expired, his wife muſt follow him; as directed by VAŚISHT'HA.

CLV.

VAŚISHT'HA:—The wife of a huſband who lives abroad, muſt wait for him eight years; after *that period* ſhe muſt follow him, *giving notice thereof* to five *perſons.*

" If on account of knowledge," ſix years muſt be expected; if he live abroad " on account of fame" to be acquired by the diſplay of his own knowledge, *he muſt* alſo *be expected* ſix years: but if he go abroad to enjoy another wife, three years.

CULLÚCABHATTA.

Thus, according to his opinion, commerce with another man, at the expiration of eight years, is not authorized by law. The text of VAŚISHT'HA muſt be ſupplied, " after *eight years*; and, *giving notice* to five *perſons.*" But another reading, has " eight," *inſtead of five*; and the ſenſe is *thus* obvious: " after eight *years.*"

But other lawyers remark, that long abſence is conſidered by Sages as equivalent to *natural* death; for, in the text of DÉVALA, it is ſaid, " if it be heard that the huſband is living, the periods

are

are doubled." Conſequently, if it be not heard that the huſband is living, the appointment ſhould be made at the end of eight years, and ſo forth, *according to the difference of claſs*. May it not be ſaid, that the text does not relate to appointments *for raiſing offspring*; for, were it ſo, the period directed for thoſe who have borne children would be unmeaning: and ſhould it not therefore be affirmed, that this is a period of probation before women can forſake their huſbands for a ſecond marriage? On this point *the ſame lawyers* propoſe a ſolution of the difficulty: although they have ſeveral children, the text (CLIII 5) allows the appointment of women to take place at the end of eight years; or, if a woman who has born a ſon, by whom deliverance from the hell called *put* is effected, though he have died, deſire male iſſue for the ſake of the *benefit ariſing from* other duties *to be performed* by a ſon, ſhe muſt be patient for a long ſpace of time. Common ſenſe obviates any *ſuppoſed* offence, if, unable to bear ſeparation from her huſband, ſhe join him within the eight years; and it alſo obviates any *ſuppoſed* offence, if ſhe do not follow him at the expiration of the eighth year. Thus the text is vindicated from its alleged futility.

"If there be no intelligence" (CLIII 4): the term is explained by AMERA, tidings or news. A woman of the ſacerdotal claſs muſt wait for her huſband eight years, if he reſide abroad on account of ſome ſacred duty; in other caſes, ſhe muſt wait ſix years or the like, for the text has the ſame import with that of MENU (CLIV): and for women of the military and other claſſes the periods are, *ſucceſſively, in the order of the claſſes*, ſhorter by a quarter *than the periods preſcribed to women of the prieſtly claſs*. Nor ſhould it be argued that the text of MENU concerns a woman of the military claſs who has borne children: there is no ground for quitting the ſacerdotal claſs firſt mentioned.

CLVI.

MENU:—By men of twice-born claſſes* no widow, *or childleſs wife*, muſt be authorized to conceive by any

* The text is here read, "by her own kinſmen." The other reading ſeems more authentick. T.

any other *than her lord;* for they who authorize her to conceive by any other, violate the primeval law.

2. Such a commiſſion, *to a brother or other near kinſman*, is no where mentioned in the nuptial texts of the *Véda;* nor is the marriage of a widow even named in the laws concerning marriage.

3. This practice, fit only for cattle, is reprehended by learned *Bráhmaṇas;* yet it is declared to have been the practice, even of men, while VÉNA had ſovereign power.

4. He poſſeſſing the whole earth, and *thence only called* the chief of ſage monarchs, gave riſe to a confuſion of claſſes when his intellect became weak through luſt.

5. Since his time the virtuous diſapprove of that man who, through deluſion of mind, directs a widow *to receive the careſſes of another* for the ſake of progeny.

"By any other" (CLVI 1); by any other than her huſband's brother or kinſman offering funeral cakes to the ſame anceſtor: and this ſuppoſes a caſe where one or the other exiſts; for YÁJNYAWALCYA alſo admits any man ſprung from the ſame original ſtock, on failure of them. The *Retnácara.*

Thus, in the caſe of an appointment *to raiſe up offspring*, a rule is propounded in this text for appointing a huſband's brother or other kinſman. If the connexion of a widow with another man were indicated by the tenor of holy texts, or by the letter of the law, would it not then only be permiſſible? The Sage replies to that argument (CLVI 3): thus, ſince there is no holy text for ſuch a commiſſion to another man, it is not ſuggeſted by the tenor of ſuch texts; and ſince that commiſſion is no-where mentioned in nuptial prayers, it is not ſuggeſted by the tenor of ſuch prayers: and it ſhould be underſtood, that there is no law in any ſuch form, which could authorize a man to marry a widow,

if

if he cannot obtain a damſel. Hence, before the reign of VÉNA, it was reprehended by learned men converſant in the *Vĕdas*; but while VÉNA reigned, that practice was introduced by his independent authority, ſlighting revealed law: ſince that time, ſome few perſons follow this practice, through deluſion of mind; but it is reprehended by the learned. This practice therefore, although it have been actually followed by ſome who were not true *Bráhmanas*, ſhould not be admitted, becauſe it has no foundation in law, and was only introduced by the ſinful VÉNA. Thus ſome expound the texts.

But CULLÚCABHATTA, on the authority of the texts which will be cited from VRĬHASPATI (CLVII), expounds them *otherwiſe:* before the reign of VÉNA, appointments to raiſe up offſpring were authorized; but VÉNA having exhibited a bad practice founded thereon, ſuch a commiſſion even to a brother or near kinſman has been prohibited ſince his time.

Others again hold, that a woman ſhould not be authorized to conceive by any other than her lord, neither by his brother or near kinſman, nor by any other perſon; for ſuch a commiſſion is not ſuggeſted by the tenor of holy texts, nor by the letter of the law. MENU conſiders ſuch an appointment as a virtual marriage: and the practice, which was introduced in the reign of VÉNA, of any perſon at random begetting iſſue on a widow, is reprehenſible.

Since MENU has authorized ſuch a commiſſion (CXLVI), is not the preſent text (CLVI) inconſiſtent with the preceding one? VRĬHASPATI explains the rule according to the difference of the four ages:

CLVII.

VRĬHASPATI:—Appointments *of kinſmen to beget children on widows, or married women, when the huſbands are deceaſed or impotent,* are mentioned by MENU, but forbidden by himſelf with a view to the order of the *four* ages: no ſuch act can be legally done *in this age* by any other *than the huſband.*

2. In

2. In the firſt and ſecond ages men were endued with true piety and ſound knowledge; ſo *they were* in the third age; but in the fourth, their *moral and* intellectual powers are diminiſhed:
3. Thus were ſons of many different ſorts made by ancient Sages, but ſuch cannot now be adopted by men deſtitute of thoſe eminent powers.

Conſequently, ſuch appointments were permitted in the ages preceding the fourth, but forbidden in the preſentage: and VÉNA reigned in this period. Such is CULLÚCABHATTA's notion.

The texts of DÉVALA (CLIII) alſo may be argued to concern other ages, as well as the commiſſion to the huſband's brother. The *Retnácara.*

Such texts of DÉVALA, therefore, regulate the marriages of women of the ſacerdotal and other claſſes to a ſecond huſband; and the text of VAŚISHT'HA directs a wife to follow her huſband after five years. In that caſe, if ſhe go and return without obtaining any intelligence concerning him, ſhe may take another huſband at the expiration of the eighth year. Such is the opinion of the authors of the *Retnácara.* But ſome lawyers remark, that the text of DÉVALA does not obviate the ſinfulneſs of ſuch conduct, but prevents a fine to the king. Thus may the law be conciſely ſtated.

SECT. III.—*On Second Marriages, or on Women previously enjoyed by another.*

CLVIII.

NÁREDA:—Others are women who had a different huſband before *(parapúrvá)*; they are declared to be of ſeven kinds, in order as enumerated: among

among theſe, the twice-married woman is of three deſcriptions; and the diſloyal wife, of four ſorts:

2. A damſel, not deflowered, but blemiſhed by *a previous* marriage, is the firſt twice-married woman *(punerbhú)*, *named* from the repetition of nuptial rites;

3. She who is given in marriage by her parents, *duly* conſidering the laws of diſtricts *and families*, but through love accedes to another man, is declared to be the ſecond twice-married woman.

4. She who is given by her ſpiritual parents to a *ſapinda* of equal claſs, on failure of brothers-in-law, is conſidered as the third;

5. Whether ſhe have borne children or be childleſs, a woman who, during her huſband's life, unites herſelf to another man from carnal deſire, is the firſt diſloyal wife *(ſwairiní)*;

6. She who deſerts an infant huſband, and has recourſe to another man, but returns to the houſe of her lord, is conſidered as the ſecond;

7. But ſhe who, after the death of her huſband, leaves his brother or other kinſman, *whoſe protection* ſhe received, and ſuffers the careſſes of a ſtranger through carnal deſire, is conſidered as the third;

8. And ſhe who, having had her protector aſſigned to her, nevertheleſs gives herſelf to another man, ſaying, "I am thine," being purchaſed with money, or oppreſſed with hunger or thirſt, is conſidered as the fourth:

9. This rule is propounded in regard to women twice married, and thoſe who are unchaſte; the firſt reſpectively are *more* deſpicable *than thoſe ſubſequently*

ly mentioned; and the laſt in gradation are preferable to *thoſe* who precede them.

The particle "and" is here disjunctive. "Women twice married and unchaſte" are expreſſed in the ſixth caſe with the ſenſe of the ſeventh. *(The rule concerning them,* &c.)

The *Retnácara.*

CLIX.

SANCHA and LICHITA, after premiſing three women twice married, and four unchaſte, add:—Among theſe the firſt are reſpectively more deſpicable *than thoſe ſubſequently mentioned;* the alternate caſes, in which their children take the heritage or offer the funeral cake and water, are ſettled according to the qualities of the mother.

Among theſe, the firſt twice-married woman is twice actually eſpouſed with nuptial rites; the ſecond is only once *actually eſpouſed:* the third is given in marriage by her kinſmen: ſuch is the diſtinction. But the ſubſequent text (CLX) does not imply, that nuptial rites are twice celebrated, but that they are celebrated with a ſecond huſband. Thus, according to ſome lawyers, the whole is well explained. Others hold this diſtinction: the firſt chooſes a ſecond huſband for herſelf; the ſecond is given away by her parents; the third is given by her parents to a man proper for the commiſſion, either her huſband's brother, or, on failure of him, a *ſapinda.* The real diſtinction conſiſts in this: ſhe who is again eſpouſed with ſolemn rites, is a twice-married woman, or *punerbhú;* ſhe who receives the embraces of another man without a formal marriage, is an unchaſte woman, or *ſwairini* *.

"The qualities of the mother (CLIX);" the ſon of a twice-married woman, whoſe conduct is in other reſpects ſtrictly moral, is entitled to the heritage of his natural father; but not the ſon of *ſuch* a woman, whoſe conduct is immoral.

CLX.

* See an ampler gloſs on theſe texts in Book I, after V. ccxx.

CLX.

YÁJNYAWALCYA:—Whether a virgin or deflowered, ſhe who is again eſpouſed with ſolemn rites is a twice-married woman; but ſhe who ſlights her lord, and, through carnal deſire, receives the embraces of a man equal in claſs, is an unchaſte woman.

"Slights her lord;" does not reſpect him, nor preſerve his bed *unſullied*. "A man equal in claſs" is mentioned generally, comprehending men of different claſs; elſe adultery with a man of a different claſs would be a caſe omitted. Hence alſo the lower claſs of the huſband neglected does not conſtitute the *parapúrvá* in the text of MENU (CLXI), but the acceptance of another huſband. CHANDÉSWARA.

CLXI.

MENU:—She who neglects her former *(púrva)* lord, though of a lower claſs, and takes another *(para)* of a higher, becomes deſpicable in this world, and is called *parapúrvá*, or *one who had a different huſband before*.

CLXII.

HÁRÍTA:—An unchaſte, and a twice-married woman, the mother of a ſon born in adultery while the huſband is alive, a laſcivious woman, and one who eats all ſorts of food, *whether lawful or forbidden*; ſhould all five be conſidered as mothers of *Súdras*:

2. The children who are any-how born of thoſe women, ſhould not be admitted to ſocial meetings; they are conſidered as unfit for ſociety.

The

The term *rêtôdhâh* (ſubdued by ſenſual appetites) ſignifies the mother of a *cunda*, or ſon born in adultery while her huſband is alive. "A laſcivious or lecherous woman" is one whoſe inordinate luſt conducts her to one man immediately after repeated converſe with another. The *Retnácara*.

"*Cunda*" is explained by AMERA, an adulterine begotten during the huſband's lifetime; and *gôlaca*, an adulterine begotten after his death. The appoſition of terms gives the ſenſe "mothers of "*Súdras*." "Any-how;" whether born during the period of the *mother's* intercourſe with her huſband, or during that of her intercourſe with a ſtranger.

CLXIII.

CÁTYÁYANA:—That woman who generates a ſon through her inclination for ſenſual pleaſures, and not through a wiſh that her huſband may have male iſſue, is declared deſpicable and ſinful.

2. If a woman, deſerting her huſband's race, receive the careſſes of another man, ſhe is conſidered as deſpicable in this world, and is called *parapúrvá*, or *one who had a different huſband before*:

3. He to whom ſuch a woman unites herſelf, ſhall not be deemed her lord: this law *prevails* unleſs ſhe be purchaſed or obtained from her huſband.

4. One who had a different huſband before, ſhould be confined and chaſtiſed for her offence; but he who chaſtiſes a woman unable *to avoid the offence*, or not aware of it, ſhall be liable to a fine.

5. If a woman be ſecured from the hands of robbers, from a rapid river, from famine, from danger in a national calamity, or from a wilderneſs, or if ſhe be forſaken *by her huſband*, or purchaſed *from him*,

6. There is no offence in the enjoyment of her; this

is

is a certain law: a man may accept a woman given by her lord, if he *freely* beſtow her; and not otherwiſe.

CLXIV.

CÁTYÁYANA:—A woman may neither be given nor accepted againſt her own conſent: this is a ſettled rule of law.

2. A man muſt not, in conſequence of ſuch a purchaſe, cohabit with a woman who is of a higher claſs *than his own*, who is reluctantly *ſold*, or who has borne a ſon.

"Her huſband's race" (CLXIII); a man ſprung from the ſame primitive ſtock: by this it is intimated that ſhe receives the careſſes of another man, without a commiſſion to raiſe up offſpring. He to whom a woman unites herſelf, though ſhe had a different huſband before, is not *deemed* her lord: in the text, one inflection is uſed for another. The meaning is, that her firſt huſband, to whom her hand was joined, is her lord. The Sage ſubjoins an exception, "unleſs ſhe be purchaſed, &c." or unleſs ſhe be obtained from her huſband: this will be explained further on. "For her offence" (CLXIII 4); for the offence ſhe has committed. The Sage deſcribes a woman obtained *from her huſband* (CLXIII 5). "Reſcued from the hands of robbers, &c." the conſtruction *of the ſentence* is this, obtained by reſcuing her from the hands of robbers and the reſt.

"Or if ſhe be forſaken *by her huſband*, or purchaſed *from him*;" if ſhe be bought. In this caſe there is no offence; that is, no puniſhable offence. The *Retnácara*.

Conſequently, there is offence in the enjoyment of other women than thoſe mentioned, even with their own conſent, if without the aſſent of their lords. In ſaying, that is not a puniſhable offence, the meaning is, that it is *nevertheleſs* a ſinful act. If her huſband give her away, then a man may accept a woman ſo beſtowed by him, but not one who is not given by her huſband. But even the huſband ſhould not give away his wife without her

own conſent; and a man ſhould not accept a wife given by a fooliſh huſband, in breach of that *rule*: therefore, both ſhall be fined if they violate the law *by ſuch a gift and acceptance*. This gift alſo comprehends ſale; for another text of CÁTYÁYANA, delivered under the title of Subtraction of what has been given (Book II, Chap. IV, v. VII 1), forbids the gift or ſale of a wife without her conſent. Barter alſo is a virtual ſale.

It ſhould be here noticed, that, even by thoſe who contend for the validity of a gift, when a wife is given or aliened without her conſent, a fine ſhould be impoſed, under the authority of the law, on him who accepts one given without her own conſent: but a woman of higher claſs ſhould not be taken even with her own conſent. This the Sage intimates in the laſt text (CLXIV 2).

It muſt be here obſerved, that the three deſcriptions of twice-married women, above mentioned, ought not to be eſpouſed; for a text, cited in the *Udváha tatwa*, expreſſes,

CLXV.

1. Daughters of the ſeven twice-married women muſt be ſhunned as girls of the loweſt birth; and ſhe who has been verbally or mentally betrothed, on whoſe arm a bracelet has been auſpiciouſly tied,
2. Who has been given away after touching water, whoſe hand has been taken by a bridegroom, or who has been approached with nuptial fire, and the twice-married woman who has borne children.

"On whoſe arm a bracelet has been tied; *and ſhe* who has "been given away after touching water:" the terms are ſo explained in the *Retnácara* and other works.

RAGHUNANDANA.

Is not ſhe who is firſt betrothed to one, and afterward ſolemnly eſpouſed by another, a twice-married woman, and may not a man *legally* marry her who has been given to one *only*? No; the precept, "eſpouſe not a twice-married woman," is ſimilar to the phraſe, 'he accompliſhes an act:' now that act is accom-

pliſhed, of which the action is complete; and a woman becomes twice-married by the *ſecond* ſolemn eſpouſal.

CLXVI.

MENU:—The king himſelf ſhall take a fine of ninety-ſix *panas* from him who gives a blemiſhed girl *in marriage for a reward*, without avowing her blemiſh.

On this CULLÚCABHATTA obſerves, 'the king, for his own ſake, ſhould impoſe a fine of ninety-ſix *panas* on him who gives to a bridegroom a blemiſhed girl, without diſcloſing her blemiſh, ſuch as one inſane or the like.' Here, a previous marriage muſt be underſtood as included under the term "and the like."

CLXVII.

MENU: — But the man who, through malignity, ſays of a damſel that ſhe is no virgin, ſhall be fined a hundred *panas* if he cannot prove her defilement.

The man who through malignity ſays, "ſhe is no virgin; ſhe has been deflowered;" ſhall be fined by the king a hundred *panas*, if he cannot prove the fault alleged againſt her.

CULLÚCABHATTA.

Thus the preceding text may allude to this blemiſh. How is it an imputation on a damſel to ſay of her, that ſhe is no virgin? The Sage, therefore, proceeds as follows:

CLXVIII.

MENU:—The holy nuptial texts are applied ſolely to virgins, and no-where on earth to girls who have loſt their virginity; ſince thoſe women are *in general* excluded from legal ceremonies.

"Virgins;" or girls not deflowered, nor given in marriage to another. Holy nuptial texts may not be legal; ſtill a marriage may take place: what then is the objection? The Sage proceeds thus:

CLXIX.

MENU:—The nuptial texts are a certain rule in regard to wedlock; and the bridal contract is known by the learned to be complete *and irrevocable* on the ſeventh ſtep *of the married pair, hand in hand, after thoſe texts have been pronounced* *.

Therefore marriage is not valid without all the ceremonies, from the junction of hands, to the ſeventh ſtep of the married pair.

"The bridal contract;" the perfect bridal contract.

RAGHUNANDANA.

The text of YÁ NYAWALCYA (CLXXXIII), explained in the *Dípacalicá* as denouncing the higheſt amercement againſt one who gives a faulty damſel in marriage without diſcloſing her blemiſh, muſt be underſtood as relating to exceſſive blemiſhes; in alluſion to this, CULLÚCABHATTA, in his gloſs on the text of MENU (CLXVI), ſtates "one inſane or the like." Some think loſs of virginity to be the defect alluded to by YÁJNYAWALCYA: this opinion may admit of diſcuſſion, for MENU notices the blemiſh of loſt virginity immediately after the text in queſtion. Thence, exceſſive blemiſh may be explained, defect in the ſexual organ or the like. Should her huſband die after the damſel has been affianced, cannot legal iſſue be produced by any means whatſoever? It cannot in the fourth age. But the Sage ſtates this ſubject otherwiſe:

CLXX.

MENU:—The damſel, *indeed*, whoſe huſband ſhall die after troth verbally plighted, *but before conſummation,*

* It is a part of the marriage ceremony for the bride and bridegroom to walk ſeven ſteps, hand in hand, during the recital of certain prayers. T.

ſummation, his brother ſhall take in marriage, according to this rule:

2. Having eſpouſed her in due form of law, ſhe being clad in a white robe, and pure in her moral conduct, let him approach her once in each proper ſeaſon, and until iſſue *be had*.

"According to this rule;" according to the rule which will be mentioned. On failure of brothers, a kinſman ſhall take her in marriage; for the text coincides with one already cited (CXLVI). The meaning is, that he muſt beget a ſon on the wife verbally betrothed, according to the law of appointments to raiſe up offſpring, which has been already delivered. CULLÚCABHATTA concurs in this expoſition; but adds, that the brother ſhould eſpouſe her with the ceremonies of marriage. If any perſon, though acquainted with the legal impediment, be willing to accept her, may her father give in marriage a damſel *already* betrothed to another? To this queſtion MENU anſwers in the negative:

CLXXI.

MENU:—Let no man of ſenſe, who has once given his daughter to a ſuitor, give her again to another; for he who gives away his daughter, whom he had before given, incurs the guilt and fine of ſpeaking falſely in a cauſe concerning mankind.

He incurs the guilt thus propounded: "*He kills* a thouſand *kinſmen* by falſe evidence concerning the human race*." This text reſolves the doubt whether a damſel may be again given in marriage, ſince the bridal contract was not complete, becauſe the married pair had not proceeded to the ſeventh ſtep (CLXIX).

CULLÚCABHATTA.

Thus, ſince gift acquires validity from the mental act of giving (for donation is a mental act), and ſince dominion ceaſes on

 the

* MENU, Chapter VIII, v. 98.

the verbal promulgation of donation, the queſtion, whether a ſecond gift may be made, cannot exiſt. The objection is thus anſwered. But, if the huſband's brother be willing to accept her, ſhe may be given to him, as declared in the following text:

CLXXII.

MENU and VAŚISHT'HA:—If a nuptial gratuity have actually been given to a damſel, and he who gave it ſhould die *before marriage*, the damſel ſhall be married to his brother, if ſhe conſent.

This is limited to the caſe where a nuptial gratuity has been given: the former text (CLXX 1) is applicable to the caſe where no nuptial gratuity has been received, and it aſſumes the form of an appointment to raiſe up offſpring. CULLÚCABHATTA.

Conſequently, in his opinion, this difference is eſtabliſhed: if a nuptial gratuity have been given, a marriage with the huſband's brother takes place; if none have been given, ſhe remains the wife of her firſt huſband. But others think, the gift of a nuptial gratuity here denotes generally that ſhe is betrothed: and thus, if the damſel conſent, ſhe may be married to her huſband's brother; but if ſhe do not conſent *to that marriage*, an appointment to raiſe up offſpring may take place, or ſhe may lead a life of chaſtity. The conſent of her huſband's brother is alſo requiſite, for the damſel is blemiſhed *by having been affianced*. A nuptial gratuity having been incidentally mentioned, MENU cenſures the receipt of it;

CLXXIII.

MENU:—But even a man of the ſervile claſs ought not to receive a gratuity, when he gives his daughter in marriage; ſince a father, who takes a fee *on that occaſion*, tacitly ſells his daughter.

2. Neither ancients nor moderns, who were good men,

men, have ever given a damſel in marriage, after ſhe had been promiſed to another man:

3. Nor, even in former creations, have we heard *the virtuous approve* the tacit ſale of a daughter for a price, under the name of a nuptial gratuity.

Even a man of the ſervile claſs ought not to receive it, much leſs ſhould a twice-born man converſant in ſacred literature. Is not this inconſiſtent with the text, which mentions the ceremony of *Aſuras* as peculiar to a mercantile and a ſervile man*; for an *Aſura* marriage is preceded by the acceptance of a nuptial gratuity *from the bridegroom?* According to *good* authorities, the *Aſura* marriage is approved ſo far as it concerns the bridegroom, and is reprehended in as much as it concerns him who gives the damſel.

One text (CLXXIII 2) refers to the caſe where a nuptial gratuity has been actually received; the other (CLXXI), to the caſe where none has been accepted. CULLÚCABHATTA.

The meaning is, that there is not conſequently any *vain* repetition. But others hold, that the firſt text has the form of a precept; but this text (CLXXIII 2) ſtates the authority of practice: the ſubſequent text (CLXXIII 3) cenſures nuptial gratuities, and is no repetition of the preceding text (CLXXIII 1). CULLÚCABHATTA, however, admits that it is a repetition of prior texts. He explains "former creations," former periods *of deſtruction and renovation of the world.*

CLXXIV.

VASISHT'HA:—If her huſband die after a damſel has been given to him with water poured on his hands, and troth verbally plighted, but before he has been contracted to him by holy texts, that virgin belongs to her father alone.

* MENU, Chapter III, v. 24.

CLXXV.

YAMA:—Neither by water poured on his hands, nor by verbal promiſe, is a man acknowledged as huſband of a damſel; the marital contract is complete, after the ceremony of joining hands, on the ſeventh ſtep *of the married pair.*

That a damſel can only once be given in marriage, ſuppoſes her married by the ceremony of joining hands.

RAGHUNANDANA.

Here is an *apparent* inconſiſtency with the text of MENU (CLXX); for he prohibits the gift of a damſel to any other. It is thus reconciled by RAGHUNANDANA; ſince the texts coincide with that which directs the damſel to be married to her huſband's brother, if ſhe conſent (CLXXII), a *Cſhétraja* ſon ſhould be procreated by her huſband's brother, if the damſel conſent; elſe, ſhe may be married as a virgin. The ſubſequent text (CLXXI) relates to a complete gift. This opinion of RAGHUNANDANA is followed in practice by the principal *Brâhmanas* of *Rā'd'ha*.

Others think, that the text of VAŚISHT'HA (CLXXIV) intimates the gift of the damſel by nuptial rites to her huſband's brother or other kinſman, at an auſpicious moment; but if they refuſe her, it ſhows that ſhe may be given to another. The text of YAMA (CLXXV) has the ſame import, and alludes to participation of the huſband's family and wealth. Thus, if the bridegroom die after the damſel has been affianced to him, the poſſibility of giving her in marriage to another is ſhown. It ſhould not be aſked, how is a ſecond gift poſſible, ſince the father's property is annulled by his mental relinquiſhment? Under the authority of the text, her father, even without property, may uſe expreſſions ſignifying gift, to effectuate the *nuptial* ceremony. Or the text of VAŚISHT'HA (CLXXIV) may be referred to a promiſed gift: and thus, if the bridgroom die after a girl has been promiſed in marriage to him, *another* may raiſe up a ſon for him alone; for a thing promiſed ought not to be given to another. It ſhould not be objected, that the text of MENU (CLXX 1) concerns a gift in words, not a *mere* promiſe. Promiſe

miſe is indicated by the expreſſion "troth plighted." If there be no kinſmen of the bridegroom, or if they refuſe the girl, ſhe may be given to another: but the girl's conſent is required; for, if her conſent be requiſite in giving her to her huſband's brother, ſurely it is required by law in giving her to another.

CLXXVI.

YÁJNYAWALCYA:—Once is a damſel given in marriage; he who detains her ſhall incur the puniſhment of a thief: but if a worthier bridegroom offer, he may take the damſel though given away, *provided the firſt were undeſerving.*

"Given away;" given in words *only*. Since the firſt bridegroom is undeſerving through his ignorance of ſacred ſcience and the like, a worthier bridegroom, ſuperior in the excellent qualities of competent ſcience and the like, *may be accepted*: this concerns an *Aſura* marriage. SÚLAPÁNI.

So, after premiſing the ſingle gift *of a damſel*,

CLXXVII.

NÁREDA thus *proceeds*:—This law is declared in regard to five forms of marriage, namely, the ceremony of BRAHMÀ and the reſt (*the ceremony of the* Dévas, *of the* Ríſhis, *of the* Prajàpatis, *and of the* Gandharvas); but the gift requires excellent qualities *in the bridegroom for its irrevocable validity* in three forms of marriage, *namely*, the ceremony of the *Aſuras* and the reſt (*the ceremony of the* Racſhaſas, *and that of the* Piſáchas).

SÚLAPÁNI adds, that the ceremony of the *Racſhaſas* and that of the *Piſáchas* are intended by the term "and the reſt."

"Given away" (CLXXVI); given in words, promiſed, and

ſo

ſo forth. "This law" (CLXXVII); the precept limiting a ſingle gift. RAGHUNANDANA.

GÓTAMA:—A man ſhall not give even what he has promiſed to a perſon whom the law declares incapable of receiving *.

His want of religious qualification is here the cauſe of his not being entitled to the gift.——The *Retnácara*, cited by RAGHUNANDANA in the *Udváha tatwa*.

CLXXVIII.

VAŚISHT'HA:—From a man of contemptible birth, from an eunuch or the like, from a degraded man, from one afflicted with epilepſy, vicious, or tainted with *ſhocking* diſeaſes, and from a frequenter of harlots,

2. A parent may take back a damſel, though given away; and ſo may he one married to a man *known from his family name to be* ſprung from the ſame primitive ſtock.

"Epilepſy;" the diſeaſe ſo called, originating in vitiated air: it is the cauſe of his falling into water, or fire, and the like, and occaſions loſs of ſenſe. "Married to a man ſprung from the ſame primitive ſtock:" the terms are explained by reſpected authorities, 'given in words by a man of the ſame primitive ſtock.' Some obſerve, that the phraſe is comprehenſive, including *ſapindas* and the reſt; elſe her marriage could not be effected.

CLXXIX.

MENU:—*But* it is better that the damſel, though marriageable, ſhould ſtay at home till her death, than

* Book II, Chapter IV, v. XLVII.

than that he ſhould ever give her in marriage to a bridegroom void of excellent qualities.

" Void of excellent qualities;" deſtitute of ſcience, and ſimilar qualities. CULLUCABHATTA.

It ſhould be underſtood, that the offence ariſing from not diſpoſing of a marriageable damſel, occurs only when a proper huſband, poſſeſſing the qualifications ſuitable to her family, can be found.

CLXXX.

CÁTYÁYANA:—If a damſel is betrothed to two or more perſons, and the firſt bridegroom arrive before the ſecond nuptials are completed, then, of all the perſons to whom ſhe is promiſed, he to whom the firſt promiſe was made ſhall obtain her;

2. And the other ſhall recover what he had given to the bride: but if the firſt bridegroom arrive when the *ſecond* nuptials have been conſummated, he ſhall receive back what he had given.

He muſt reſtore the girl to the firſt bridegroom, and pay a fine to the king, as directed by YÁJNYAWALCYA (CLXXVI).

CLXXXI.

CÁTYÁYANA:—Should a man depart after giving the nuptial gratuity, it becomes the excluſive property of the damſel; ſhe muſt be detained one year, and may *afterwards* be legally given in marriage to another:

2. But if tidings arrive, ſhe muſt wait three years, and after that period the girl may be given to another at pleaſure.

" If

"If tidings arrive;" if news be received.

RAGHUNANDANA.

This ſuppoſes that he went abroad without the aſſent of the girl's father, but fixed a time for the marriage agreed to. "A nuptial gratuity:" there is no proof that he who has given nothing ought to be waited for.

CLXXXII.

NÁREDA:—The man who abandons an unblemiſhed damſel after accepting her, ſhall be amerced in a pecuniary fine; and he muſt marry that damſel.

CLXXXIII.

YÁJNYAWALCYA:—He who gives a faulty damſel in marriage, without diſcloſing her blemiſh, ſhall be fined in the higheſt amercement; and he who abandons an unblemiſhed girl, ſhall be amerced in a hundred *mrĭſhas*.

The penalty for giving a *faulty* damſel in marriage without diſcloſing her blemiſh, and for a bridegroom abandoning a blameleſs girl, is the higheſt amercement. SÚLAPÁNI.

CLXXXIV.

MENU:—Even though a man have married a young woman in legal form, yet he may abandon her, if he find her blemiſhed, afflicted with diſeaſes, or previouſly deflowered, and given to him with fraud:
2. If any man give a faulty damſel in marriage, without diſcloſing her blemiſh, the huſband may annul that act of her ill-minded giver.

"Have

"Have married;" have promiſed to marry. On this CULLÚCABHATTA obſerves: 'Even though he have received her in the 'form ſuggeſted by the following precept, or in another form, '"The gift of daughters in marriage by the ſacerdotal claſs is '"moſt approved, when they have previouſly poured water into '"the hands of the bridegroom *," he may abandon her, if he 'diſcover, before the ſeventh ſtep, that ſhe has an ill token aſ-'certained from palmiſtry or the like, that ſhe is diſeaſed, has 'been accuſed of loſing her virginity or the like, or was given 'to him with fraud by concealing a *ſuperfluous finger or other* 'redundant member or ſimilar deformity; hence there is not in 'ſuch a caſe any offence in abandoning her: for this purpoſe, 'and not to direct the abandoning of her, the text is propound-'ed. The other text is alſo propounded to ſhow that there is 'no offence in abandoning a faulty bride: he may, by returning 'her, annul the act of her ill-minded giver, who gives a faulty 'damſel in marriage without diſcloſing her blemiſh.'

Others hold, that the firſt text declares there is no offence in abandoning a bride, even without finding a blemiſh, when the father has ſubſtituted another in place of her whom he had ſhown, and who, unknown to him, had an ill token according to palmiſtry, had a redundant finger or other member, was afflicted with a ſevere diſtemper, had been deflowered or the like; and which blemiſh he afterwards diſcovered. But the other text declares, there is no offence in abandoning a damſel, whoſe blemiſhes the bridegroom diſcovers after her father had betrothed her to him without diſcloſing her defects though known to himſelf.

MENU propounds the blemiſhes of damſels:

CLXXXV.

MENU:—Let the twice-born man eſpouſe a wife of the ſame claſs with himſelf, and endued with the marks of excellence.

2. She who is not deſcended from his *paternal or maternal* anceſtors within the ſixth degree, and who

* MENU, Chap. III, v. 35.

who is not *known by her family name to be* of the ſame primitive ſtock with his father or mother, is eligible by a twice-born man for nuptials and holy union:

3. In connecting himſelf with a wife, let him ſtudiouſly avoid the ten following families, be they ever ſo great, or ever ſo rich in kine, goats, ſheep, gold, and grain:
4. The family which has omitted preſcribed acts of religion; that which has produced no male children; that in which the *Véda* has not been read; that which has thick hair on the body; and thoſe which have been ſubject to hemorrhoids, to phthiſis, to dyſpepſia, to epilepſy, to leproſy, and to elephantiaſis.
5. Let him not marry a girl with reddiſh hair, nor with any deformed limb; nor one troubled with habitual ſickneſs; nor one, either with no hair, or with too much; nor one immoderately talkative; nor one with inflamed eyes;
6. Nor one with the name of a conſtellation, of a tree, or of a river, of a barbarous nation, or of a mountain; of a winged creature, a ſnake, or a ſlave; nor with any name raiſing an image of terror;
7. Nor one very fat or very lean; or very tall or very ſhort; nor one older than himſelf; nor one wanting a limb; nor one prone to theft or contention.
8. Let him chooſe, for his wife, a girl whoſe form has no defect; who has an agreeable name; who walks *gracefully* like a phenicopteros or a young elephant; whoſe hair and teeth are moderate reſpectively

tively in quantity and in ſize; whoſe body has exquiſite ſoftneſs.

9. Her who has no brother, or whoſe father is not well known, let no ſenſible man eſpouſe, through fear leſt, *in the former caſe*, her father ſhould take her firſt ſon as his own *to perform his obſequies*; or, *in the ſecond caſe*, leſt an illicit marriage ſhould be contracted.

Let him avoid theſe families (CLXXV 3), however much they abound in kine, goats, ſheep, money, and grain: "the family which produces no male children," but daughters only; ſince the procreation of a ſon may not be expected: "that in which the *Vēda* has not been read;" in which knowledge of the *Vēda* is deficient: and that in which even the females have long and thick hair on the body: in ſuch a family let him not eſpouſe a girl, be ſhe ever ſo young; nor in thoſe which have been ſubject to hemorrhoids (the particular diſeaſe ſo called), phthiſis or maraſmus, dyſpepſia or depraved digeſtion.

Let him not marry a girl immoderately talkative, or blameably loquacious; nor one with the name of a conſtellation or lunar aſteriſm, or with the name of a barbarous nation devoid of ſcience and refined language, or with the name of a ſnake or ſerpent, or of a ſlave or bondſman; or with any name raiſing an image of terror, or exciting ſenſations of fear.

CLXXXVI.

YÁJNYAWALCYA:—*Sprung* from a noble family of learned prieſts, which is recommended by ten perſons, *univerſally* celebrated, and not tainted with contagious diſeaſes and crimes;

2. Endued with theſe excellent qualities, equal in claſs, and eminently learned, ſhould be the bridegroom *choſen for a damſel.*

"Endued

"Endued with theſe excellent qualities;" ſprung from a family celebrated as free from the contagion of diſtempers and crimes; and alſo poſſeſſed of the good qualities mentioned by other Sages.

CLXXXVII.

NÁREDA:—The penalty is double for a bridegroom who conceals his own blemiſhes when he marries; and a wife may abandon a huſband who communicates any thing noxious.

"Penalty;" amercement. SULAPÁNI.
"May abandon;" no fine to the king is incurred by a wife abandoning ſuch a huſband.

CLXXXVIII.

MENU:—A wife, given by the gods, *who are named in the bridal texts*, let the huſband receive and ſupport conſtantly, if ſhe be virtuous, though he married her not from inclination: ſuch conduct will pleaſe the gods.

2. To be mothers, were women created; and to be fathers, men: religious rites, therefore, are ordained in the *Véda* to be performed *by the huſband* together with the wife.

CLXXXIX.

MENU:—In whatever family the huſband is contented with his wife, and the wife with her huſband, in that houſe will fortune be aſſuredly permanent.

2. Certainly, if the wife be not elegantly attired, ſhe

ſhe will not exhilarate her huſband; and if her lord want hilarity, offspring will not be produced.

3. A wife being gaily adorned, her whole houſe is embelliſhed; but if ſhe be deſtitute of ornament, all will be deprived of decoration.

CXC.

MENU:—"Let mutual fidelity continue till death:" this, in few words, may be conſidered as the ſupreme law between huſband and wife.

2. Let a man and woman, united by marriage, conſtantly beware, leſt, at any time diſunited, they violate their mutual fidelity.

Let the mutual fidelity of huſband and wife, in reſpect of religious duty, wealth and pleaſure, continue till death: this, briefly, ſhould be deemed the ſupreme law between man and woman. They muſt always take ſuch care that they infringe not mutual fidelity, becoming diſunited in any matter concerning religion, wealth, or pleaſure. CULLUCABHATTA.

PART II.

SUCCESSIONS.

BOOK V.

ON

INHERITANCES.

CHAP. I.

ON

PARTITION OF PATRIMONY.

SECT. I.—*On Succession in general.*

ART. I.—*On Property; and on the Transfer of it.*

1.

NÁREDA:—That title of law, under which a diſtribution of the paternal eſtate is inſtituted by ſons, has been called, by the wiſe, Partition of Heritage.

"Under which;" under which title of law. "Is inſtituted;" is made. The *Retnâcara.*

What deſcends from the father is "paternal;" and that is

called, Property devolving *on ſons* by the death of the father. Both expreſſions, " paternal *eſtate* " and " by ſons," are merely illuſtrative of relation or conſanguinity; for the term 'inheritance,' or 'partition of heritage,' is alſo uſed to ſignify a diſtribution of property among any relatives. Accordingly NÁREDA alſo, having premiſed the forenſick term Partition of Heritage, notices the diſtribution of property left by the mother and the reſt. So MENU likewiſe, premiſing the ſame title, without employing the word father or other limited deſignation, propounds the diſtribution of property in every relation. JÍMÚTAVÁHANA.

II.

MENU:—Thus has been declared to you the law, abounding in the pureſt affection, for the conduct of man and wife, together with the practice of raiſing up offspring *to a huſband of the ſervile claſs* on failure *of iſſue by him begotten:* learn now the law of Inheritance.

" Eſtate " (I); property. " Paternal;" obtained through the relation *of the ſon* to the father. RAGHUNANDANA.

Conſequently that property, on which a diſtribution orpartition of a veſted right, depending on relation *or conſanguinity*, may be inſtituted, is named diſtributed heritage, a title of juriſprudence. In ſhort, heritage is a title of law. Since the merits of oppoſite pleas ſet up by a plaintiff and defendant (" this allotment of ſhares is improper; this allotment of ſhares is equitable;") may be determined under *the title of Heritage*, which comprehends the allotment of ſhares, that title of judicial procedure is taken in a literal ſenſe, " *inheritance or heritage.*" Since this word, and the term which occurs in the text of MENU (Book II, Chapter I, v. II 4. *and which term has been there explained* " *law of inheritance*"), may ſignify the partible heritage, becauſe a rule expreſſes, that neuter derivatives from active words are ſimilar to *nouns denoting* ſubſtance, or becauſe the term is derived in the paſſive form, there is no objection *to this interpretation.* Thus ſome lawyers expound the terms.

Since

Since this title of juriſprudence has not been expreſsly diſtinguiſhed by that name, the obvious deſign of the writer would be ſubverted; *for* the *other* ſeventeen denominations which occur in the text of MENU, namely debt and the reſt, nonpayment of wages, larceny and the reſt, bear an abſtract ſenſe, whilſt one denomination only would ſignify the thing which poſſeſſes the abſtract nature. The title of Loan and Payment compriſes the ſeveral abſtract properties which conſtitute a creditor and ſo forth, as has been already explained. By the rule quoted, grammarians, who contend that action is ſingle, acknowledge its ſimilarity to ſubſtance, and thereby permit the uſe of ſuch terms in the dual and plural numbers. Words of this deſcription do not denote ſubſtance. If they did, there could be no inflection with a neuter ſenſe, ſince the derivatives would not bear the abſtract ſenſe of the verb. The ſame muſt be univerſally admitted on the ſuppoſition of a paſſive inflection. If that be queſtioned, then *the text muſt be thus paraphraſed:* on whatever property a partition or diſtribution of the patrimony is inſtituted, ſuch diſtribution of that property (for the connexion of the correlatives is poſitive,) is a title of juriſprudence called Partition of Heritage. In a word, the partition which takes place in reſpect of partible heritage, alone conſtitutes the forenſick title denominated Partition of Heritage.

Is not partition of heritage *(dâyabhâga)* termed diſtribution of inheritance *(dâyabhâga vibhâga)?* What uſe is there in ſuch an incumbered definition? Yet there is no vain repetition; for it conveys the meaning of the term *(dâyabhâga)* inheritance or partition of heritage. *The anſwer is;* no *ſuch* objection can be made, ſince the *legiſlative* independence of the Sage muſt be acknowledged. Or ſo much is added to aid the perfect comprehenſion of the ſenſe conveyed by the term heritage: for, ſince the partition which takes place in reſpect of partible property devolving from a father on his ſons, is called partition of heritage, it follows, that ſuch property is *(dâya)* heritage; and, ſince the term heritage is alſo uſed to ſignify property of which no partition is made, participation, not partition, is ſtrictly intended.

Some conſider the relative as employed in the ſeventh caſe ſubſtituted for the firſt. Conſequently the ſenſe is, "that partition,

which is inſtituted, is partition of heritage." But others read, "*yat tu* or *yas tu*, but that," inſtead of "*yatra*, where or in which," and interpret the text ſimilarly. The learned deſcendents of learned anceſtors take the relative in the ſeventh caſe, with a cauſal ſenſe: the ſubject is the title of law which conſiſts in partition; and the word partition, which occurs in the text, is intended to juſtify diſtribution by a cauſal derivation *of the term*: conſequently the ſenſe is, 'that title of law, whereof partition is the element, and which is eſtabliſhed as the cauſe and ground of a diſtribution by lots or the like, is called Partition of Heritage.' Partition therefore, as a title of law, bears an abſtract ſenſe; and this well reaſoned opinion is unexceptionable. Again; the partition of heritage, or the heritage which is divided (according to the different opinions *mentioned)*, is ſignified by the term Inheritance; and that conſtitutes the title of judicial procedure. Such is the interpretation of RAGHUNANDANA, JÍMÚTAVÁHANA and the reſt.

But, in fact, that diſtribution, participation, or ownerſhip of the paternal eſtate, (or wealth deſcending from the father in conſequence of his death or the like, or, in other words, property of the deceaſed father,) which is eſtabliſhed or acknowledged by the ſons to veſt in a certain owner, is a term of law relative to ownerſhip. Conſequently, from the relation of the term, ownerſhip itſelf being the title of law, the property of the eſtate, which belonged to a deceaſed owner, being veſted *in another* by reaſon of conſanguinity, is inheritance.

Or the relative may be expreſſed in the ſeventh caſe with the ſenſe of prop or ſupport; as in the example, "he reſides with his preceptor:" and partition ſignifies allotment. Conſequently the ſenſe is, that ownerſhip of heritage, in right of which ſons make an allotment, is a title of law named Inheritance. *Ownerſhip, as* the ſupport of an allotment of the heritage, is a cauſe mentioned ſolely by way of illuſtration. Hence, even the ownerſhip of heritage which is not divided is unexceptionably conſidered as inheritance; and thus the text of BAUDHÁYANA, the rules of VISHNU (III and CCCCXVII) and other texts are truly explanatory of inheritance. This has been ſufficiently diſcuſſed.

If partition, as a term ſynonymous with diviſion, ſignify the ſeparation of the integrant parts of the thing divided, would not the

the thing be deſtroyed? If it ſignify diſunion of *intereſts among* the brethren in reſpect of each other's property, no ſeparation could be made of property connected with the property of another brother, even though the *individual* right be aſcertained. *To this it may be anſwered*, the act of aſcertaining the *individual* right, or the aſcertainment of *a ſeparate* title, is partition, or diviſion; for, on the death of the father, his right is deveſted, and a title veſts in his ſon or other heir; and in the caſe of two or more ſons, each ſon has a ſeveral title to that property, which ſhall *thereafter* be received by him: but, ſince that is abſolutely inviſible, and cannot be perceived by the eyes or other ſenſes, it is aſcertained by lots or the like, and argued from logical inference alone; that ſolely conſtitutes aſcertainment: or the conſequent act, ſuch as diſtribution by caſting lots or the like, is ſignified by the term partition.

But, if a ſingle female ſlave, or one cow or the like, be the property left by the father, what ſhould be the mode of proceeding, ſince a diſtribution by lots is not poſſible? VRĬHASPATI has provided for this caſe (CCCLXVI 5). Such property muſt be apportioned according to the reaſon of the law, elſe it would be rendered uſeleſs. In the caſe ſuppoſed, all the heirs have a title to the ſingle female ſlave. For inſtance; on the death of one who leaves five ſons, the eldeſt ſon has, in the firſt place, a right *to employ* that female ſlave during ſix days; and afterwards the next born, during other ſix days. In this and other modes their ſeveral rights may be adjuſted; or lots may be caſt, after executing a document for the regulation of periods.

Is the title to that female ſlave, which the eldeſt ſon poſſeſſed, deveſted after the expiration of thoſe ſix days, or does it ſtill ſubſiſt? On this doubt ſome lawyers remark, that many titles or proprietary rights over an individual, but which exiſt partially in reſpect of time*, were previouſly veſted in the ſons: theſe *rights* muſt be conſidered as veſting in thoſe ſeveral perſons, one after the other, at certain periods, which ſhall be ſubſequently ſettled by an umpire. In that caſe the award of ſuch an umpire conſtitutes the ſeparation of thoſe ſeveral rights: and here the expreſſion

* A term of logick, *avyápyavŕitti*, by which I underſtand partial exiſtence. It is diſtinguiſhed into predicates partial in reſpect of place, and partial in reſpect of time. T.

expreſſion " were previouſly veſted," obviates the ſuppoſition of repeated lapſe and revival of property. Again; a right to that female ſlave ſubſiſts, connected with the aſcertainment that it ſhall ſubſiſt *in full force* on thoſe ſeveral days awarded by the umpire: and, ſince this right is deſcribed as partially exiſtent in reſpect of time, it does not ſubſiſt *in full force* after the cloſe of thoſe ſeveral periods; like the faded colour of a jar; like claſs and ſort, ſuch as the generalizing of names or the like, *which may vary with the change of name*; and like the *temporary* abſence of a quality partially exiſtent. Hence, after the expiration of the ſeveral periods, the coparcener, *whoſe turn is paſt*, may not employ the female ſlave. Such is the opinion of JÍMÚTAVÁHANA.

Is property included in the ſeven categories, ſubſtance and the reſt, or is it diſtinct therefrom? To this VÁCHESPATI BHATTÁCHÁRYA, grounding his opinion on the *Mímánſa* philoſophy, replies: property is a certain faculty* ſubſiſting in the ſeveral ſubſtances; but, according to the *Nyáya* philoſophy, he adds, 'ownerſhip is a relation between cauſe and effect, attached to the owner who is predicated of particular ſubſtances, and ſubſiſting in the ſubſtance by connection with the predicable.' That alone is right: property conſiſts not in the right of aliening at pleaſure, nor is it a conſequence *ſimply* deduced from poſitive law, which declares the right of aliening at pleaſure; for that would be an identical inference†, in this manner; if there be property, then a man may aliene at pleaſure, and property is the right of aliening at pleaſure: or the law declares a power of aliening at pleaſure, that which is poſſeſſed as property; here again is a confuſion of premiſes and conſequence. Hence SRÍNÁTHA ſays, in the *Padárt'ha tattwa*, property is a diſtinct category. He conſiders it as a category diſtinct from the ſeven predicaments, becauſe there is no argument by which it can be eſtabliſhed to be a faculty, nor any argument by which it can be placed under quality

* *Sanſcára*, faculty; enumerated by logicians among qualities: as, faculty of rapid motion; retention of ideas, or faculty of recollection; faculty of continuing the motions neceſſary to life; and many others. I tranſlate it faculty, but this muſt be taken in a limited ſenſe. T.

† *Átmáſraya*, identical; a propoſition not legitimate, becauſe the predicate is the ſame with the ſubject; or an inference not legitimate, becauſe the concluſion reſts on itſelf, or becauſe the effect is referred to itſelf as a cauſe. T.

quality and the reſt. It exiſts in ſubſtance, ſuch as gold, ſilver, cattle and the like.

But SRÍ CRÍSHNA TERCÁLANCÁRA holds, that as property abides in ſubſtance, ſo it does in quality alſo. For inſtance; the precept, "conſecrate a black bull," and ſimilar phraſes, ſuggeſt the conſecration of a bull, to which the quality of blackneſs is an attribute. Now conſecration cannot take place without property; therefore property is acknowledged in reſpect of that to which the quality is attributed: and conſequently property is proved to exiſt in the accident or black colour, as well as in the ſubject or bull. As it is ſaid, the father is arrived, accompanied by his ſon; *in which example arrival is affirmed both of the accident and ſubject.*

That is wrong; for property in no other inſtance appears to abide in quality. In the example propoſed, "conſecrate a black bull," as in the phraſe "a man carrying a ſtaff and wearing earrings;" there is no difficulty in apprehending the conſecration of a bull, with which the quality of blackneſs is contemporary. Conſequently, the conſecration of the bull, and the contemporary exiſtence of the quality of blackneſs in the bull, are required by the precept*.

Logicians, admitting the numeroſity of the bull changed by growth, diminution, and the like, *(or in other words, denying the permanent identity of a body ſubject to change,)* and apprehending the conſequent difficulty from eſtabliſhing various property, affirm ownerſhip to be veſted in the man; and the predicable, conſiſting in the connection of eſſential properties, is acknowledged to adhere to the bull, which may be of various colours.

Whether property inhere in the thing, or ownerſhip in the man, what is the cauſe of property? VÁCHESPATI BHATTÁCHÁRYA replies, 'acquiſition is the ſole cauſe of property: and 'that acquiſition is the act of the acquirer, *earning wealth in ſuch 'modes as are* ordained by the law. This, again, is of three ſorts: 'in ſome inſtances it is corporeal, as agriculture, commerce, or 'the like; in others it is verbal, as teaching the ſacred ſciences 'and the reſt; in others again, it conſiſts of mental deſign or 'volition,

* Men of the ſervile claſs are enjoined to diſmiſs black (literally blue) bulls on certain occaſions. The higher claſſes, on the ſame occaſions, diſmiſs bulls of a reddiſh white colour. T.

'volition, as acceptance of gift, embezzlement of depoſits and 'ſo forth. But, in the caſe of heritage, ſince a law declares 'that "in ſome inſtances acquiſition is by birth," and the text 'of GÓTAMA expreſſes "even by birth alone a man may gain 'ownerſhip," the birth of ſons and the reſt conſtitutes acqui-'ſition, through the medium of the connection of filiation: that 'alſo is corporeal.'

Acquiſition of various kinds becomes the cauſe of property *ſingle in its kind*; as graſs, flint, or touchwood *, and the *igniting* gem, are cauſes of fire. As flame may be produced from an igniting gem even without graſs, though fire be uniform in its kind, or without the gem or graſs, from very inflammable wood, and conſequently graſs and the reſt become cauſes of fire *ſingle* in its kind; ſo do agriculture and the reſt become cauſes of property *ſingle* in its kind. Thus grain and the like firſt become the property of him who raiſes them; and next, of the purchaſer, donee, or the like: in theſe caſes, the property of the original owner is only deveſted by his own volition; and that volition proceeds from the acceptance of a price, from the wiſh of moral purity or the like, from ſervice and ſo forth, or from ſolicitude for the accompliſhment of his purpoſe. In theſe caſes, property veſts in the purchaſer through the payment of the price and acceptance of the chattel transferred: it veſts in the donee ſolely through acceptance of the chattel; for no otherwiſe does he acquire it: it veſts in ſervants and the reſt, through the medium of the maſter's volition, in conſequence of the performance of certain work; or the acceptance of the money may be the ſole origin of property veſting in ſervants and the reſt. In caſe of inheritance, birth alone is cauſe of property; and that birth is a particular relation of body, not a relation taking place at the firſt inſtant of procreation.

May not a ſon have property in the wealth of a living parent? Let it not be anſwered, this is admiſſible; for it would contradict the law: DÉVALA (V) declares, that, while the father lives, his ſons have no ownerſhip of his eſtate. If this be propoſed, the argument is denied: DÉVALA, declaring the want of ownerſhip

* The word *aran'i* is ſubſequently explained a particular ſort of wood, and ſhould ſignify very inflammable wood, from which fire is obtained by attrition; but the ſame term is frequently uſed for a flint. T.

ſhip while a faultleſs father is living, in effect aſſigns the death of the father as a *mediate* cauſe of property veſting in his ſons; by propounding the term "faultleſs," he ſuggeſts the degradation of a father as a *mediate* cauſe of transferring property to the ſon. *But*, ſince both theſe are inconſequent; ſince it is difficult to prove the cauſe from their producing a deveſture of property; and ſince it is a falſe concluſion in logick*, becauſe the ſame may be truly aſſigned as the cauſe of another effect; therefore, omitting theſe, the *immediate* cauſe is in effect aſſigned in the deveſture of the father's property.

That being the caſe, would not the property of the father's eſtate *repeatedly* veſt every inſtant in the ſon, after the death of his father; for the deveſture of the father's property, and filiation, *or relation of the ſon to the father*, ſubſiſt continually? Let it not be anſwered, that there is no objection, ſince the cauſe may be aſſigned in the deveſture of the father's property, which may be ſuppoſed *to take place* at the moment of *his ſon's* birth: the poſſible title of the ſon to wealth beſtowed on prieſts by the father in his lifetime would be imperfectly barred. If this be alleged, the anſwer is: ſince property veſts in the purchaſer through the price ſettled, and through *his* acceptance *of the bargain*, even though the chattel be not delivered; and in the donee, through *his* acceptance *of the gift*; property is eſtabliſhed to be an impediment to *concurrent* property; hence there could be no property ariſing every inſtant, and rolling like the waves of a ſtream: and the chattel being delivered by the father, no right is veſted in the ſon, ſince it is reſiſted by the father's declared will, "this ſhall belong to the prieſt." In like manner, even in the particular caſe of uſucaption, when the father ſuffers land to be poſſeſſed by a ſtranger during twenty years, ſince the property is deveſted, no right is veſted in the ſon; for property dependent on relation to the

* *Anyathá ſidd'hi*, in logick, diſproves a cauſe. Cauſe is what neceſſarily precedes; but every thing which has preceded, is not the cauſe of the event conſidered: in the definition of cauſe, it is therefore a requiſite condition, (in the language of *Hindu* dialectics,) that it be not true of ſomething elſe. This may be beſt underſtood from the five heads into which it branches: 1ſt, that by which the more immediate cauſe is inferred, or, 2nd, by which it becomes perceptible (as the abſtract eſſence, or the colour of a thing); 3d, what is already aſſumed as the cauſe of another *unconnected* event; 4th, what is aſſumed as the cauſe of the immediate cauſe; 5th, what did not neceſſarily precede the event conſidered. T.

the father, is reſiſted by adverſe poſſeſſion ſuffered by that father. Again; ſince the title of a daughter and the like is reſiſted by the intervening title of a ſon and the reſt, which is dependent on affinity, daughters and the reſt have no right to the patrimony if a ſon be living. No other cauſe *of ſucceſſion* ſhould be eſtabliſhed beſides the deveſture of the father's property; and the text of DÉVALA is a lax expreſſion *of the conſequence*, when a cauſe ſubſiſts for ſuch an effect. For inſtance; if no property veſt in the ſon while the father's title ſubſiſts, then ſurely a ſon has no ownerſhip while the father is living.

JÍMÚTAVÁHANA affirms, that acceptance is not the cauſe of property; were it ſo, the accepter, performing the act which confers property, would be the giver, *which is abſurd:* but gift alone, like the annihilation of the party's own property, becomes the cauſe by which the property of another is produced. Nor ſhould it be argued that receipt is acceptance; that acceptance conſiſts in making that his own which was not his own: that this operation is an act, and that act is the receipt *of the thing given:* before receipt, the chattel was evidently not his own; but when receipt has paſt, it has become his own: receipt alone is therefore the cauſe of property. For, *to this it may be replied*, the title effected by acceptance conſiſts in the power of aliening at pleaſure; becauſe, a gift being made to an abſent donee, he does not appropriate it at pleaſure, even though property be veſted in him, ſince he is ignorant of his right. When the gift becomes known to him, he then knows, "this is mine;" that alone is acceptance: afterward, knowing it to be his own, he appropriates it at pleaſure, without needing the aſſent of another. Nor ſhould it be alleged, that, acceptance being a mode of acquiſition, as recorded in the text, "by ſacrifice, by teaching the ſcripture, and by acceptance of gifts, a prieſt may earn wealth," it follows that acceptance generates property. "Earn" does not here ſignify generate property, but induce an act which does generate property, ſuch as the ſurrendry on the part of the giver. For, as *the prieſt*, by interpreting the *Véda*, or aſſiſting *another* to ſacrifice, diſpoſes the giver to beſtow a preſent, and obtains the ſurrendry from him; ſo likewiſe, ſince the giver entertains the notion that *the prieſt* will accept it, he, who yields future acceptance connected with that notion, effects the ſurrendry from the giver; elſe

that

that notion could not exiſt, ſince there would appear no object of it. May not "earn" ſignify generate property? That ſacrifice and the reſt generate property, is admitted. Should it not be likewiſe affirmed, that acceptance, howſoever involuntary, generates property? Even the accepter would be the giver; for the donor is he who produces ſuch an effect as the inveſtiture of transferred property, and that deſcription would be applicable to the donee, *which is abſurd*. Let it not be alleged, that the act of the giver is not the efficient cauſe of property veſted in a perſon other *than the former owner*, becauſe there is no authority for conſidering gift as the efficient cauſe of property veſted in another. MENU declares donation alone to be a cauſe of property veſted in the donee; "gift is the cauſe of ownerſhip." Such is the opinion of JÍMÚTAVÁHANA.

VÁCHESPATI BHATTÁCHÁRYA holds, that MENU mentions gift as contributing to the property veſted in the donee, and that through the deveſture of the property held by the former owner. But acceptance is a cauſe of property, under the authority of the text cited by ŚÚLAPÁNI (and quoted in the preceding comment). Sacrifice and teaching the *Véda*, mediately cauſing property, are truly means of acquiſition: but future acceptance cannot be a mode of acquiſition, becauſe there can be no actual object conſidered: and the foregoing argument is thus weakened. Accordingly, ſhould a donary be given, intended for prieſts in general, any one prieſt may poſſeſs it; elſe, ſince there is no ground for ſelection, ſhould one take a chattel owned by all prieſts, he muſt diſtribute it to all, like joint-property. Nor can it be eſtabliſhed, that property veſts *originally* in him alone who ſubſequently takes it. Of this there is no proof. Nor ſhould it be objected, that the ſeizure of a preſent intended for a prieſt reſiding at *Cáśí* would be no theft. This may be unexceptionably held admiſſible. Or, terming it ſeizure of another's property, there is no objection to conſider as theft the ſeizure of a chattel intended to become the property of another, as well as the ſeizure of a chattel actually poſſeſſed as property by another.

DHAUMYA:—On failure of the proper object, how ſhall a preſent be diſpoſed of, which was beſtowed

on an abſent perſon? Let it be delivered to kinſmen ſprung from the ſame original ſtock, or, on failure of theſe, to his diſtant kindred.

From this text, which enacts, that a chattel given away, even though it have not been accepted, muſt be delivered to the kinſmen of the perſon intended, it appears that property is conferred by mere gift without acceptance; elſe, why ſhould the kinſmen of the perſon intended be alone mentioned? Conſider the reverſe as true; for, did property veſt in the perſon intended through gift alone without acceptance, then it muſt of courſe be taken by a ſon or other heir, becauſe it has become *a part of* the patrimony: and for what purpoſe has the text of DHAUMYA been propounded? A preſent made for the benefit of a deceaſed *Brâhmana* erroneouſly ſuppoſed to be living, muſt be delivered to his ſon or other heir: is not the text deſigned to convey this precept? What follows from this? For *the argument ſuppoſes that* property was veſted before acceptance. Therefore, ſhould a preſent not be delivered to him for whom it was intended, the law ſhows the gift to be imperfect: hence it muſt be delivered *to complete the gift*. In anſwer to the queſtion, 'to whom ſhould it be delivered if he died before or after the donation?' The text of DHAUMYA ordains, that it ſhall be delivered to the ſon or other heir, in like manner as donaries or the like given in honour of deities muſt be delivered to prieſts and the reſt.

Since the text cited in the *Malamâſa tatwa** declares the giver guilty of theft, if gold given, but not delivered, be loſt *by his fault*, and not made good; and ſince theft conſiſts in the ſeizure of another's chattel, a chattel given away becomes the chattel of another even before his acceptance: being acknowledged to belong to the donee, ſurely it muſt evidently follow that property was veſted in him. It is ſo after the chattel has been given: *but* if it immediately become the property of the donee, then the ſeizure of it would be truly a theft, under the text which deſcribes theft in general; and the enunciation of this text would be ſuperfluous. Conſequently this text intimates a figurative theft, conſidering a chattel ſurrendered for the benefit of another, though not yet accepted *by him*, as ſimilar to property veſted in another.

* See Book I, Chap. II, Sect. III. Art. III.

another. Admitting the property of the donee, ſince the giver has not ſeized, *but only loſt*, the chattel, the definition of real theft is inapplicable, even according to your opinion; therefore, ſeizure and theft, in this place, are both figurative.

If any thing have been given away by a donor for the benefit of a prieſt, it is ordained that it ſhall be delivered to his ſons ſhould the donee die before delivery; ſhall it be delivered to the ſon alone, or to all the ſons and grandſons in the male and female line, and the reſt? or, is the object attained by delivering it to the ſons of daughters and the reſt, even though a ſon of the donee be living? To this queſtion it is anſwered, the donor muſt deliver it, in the order of proximity, to the remoter heirs reſpectively, on failure of nearer heirs, as ſuggeſted by the text of DHAUMYA; and that order is ſimilar to the ſequence of inheritance.

Is not the ſequence different from the ſeries ordained in the caſe of inheritance, ſince the text ſtates this order, "kinſmen ſprung from the ſame original ſtock, and diſtant kindred:" this order alone ſhould therefore be admitted: in the firſt place, it ſhould be delivered to any one kinſman ſprung from the ſame original ſtock; next, on failure of ſuch, to diſtant kindred? No; for that ſequence is alſo unacknowledged by the text of NÁREDA (Book I, v. CCXXX). Conſequently, the order of inheritance ſhould alone be admitted; for this chattel is ſimilar to one which had become the father's property. In the firſt place, it ſhould be delivered to the ſon, grandſon, or great-grandſon; on failure of theſe, to the widow. According to the opinion of thoſe who contend for property veſted before acceptance, this muſt certainly be eſtabliſhed.

If the donor delivered it to one ſon alone, and other ſons be living, then, ſince the accepter alone made the acquiſition, the reſt would have no title; *or*, even though all ſhould have a title grounded on the original intention in favour of the father, he to whom the chattel is delivered would ſhare a double portion, becauſe he gained the property. Let it not be ſaid that this is admiſſible: it contradicts JÍMÚTAVÁHANA and the reſt; for, according to his opinion, property is acknowledged prior to acceptance; and all the ſons ſhall therefore receive equal ſhares, ſince that chattel is a part of the patrimony. If this be propoſed, the anſwer is, he ſhall be compelled to give it up, if he

receive ſuch a chattel without diſtributing to his brothers their ſhares, in like manner as when ſuch a chattel is taken by a ſtranger. But if he fraudulently take it *as a preſent to* himſelf, not conſidering *it as a gift to* his father, it is ſimilar to a thing given to many perſons, neglected by the reſt, and received by one.

Here it ſhould be obſerved, that the donor ought to deliver the preſent to all the ſons *jointly*; elſe the object *of the gift* would not be attained. Hence, he ſhould not deliver it to a daughter's ſon, if a ſon be living. In like manner, ſhould a ſtranger ſeize on the road a chattel ſent by one perſon to another, he ſhall be puniſhed as a robber, and the chattel muſt be recoverable from the thief by him for whom it was intended.

Conſequently, in the caſe of gift, acceptance alone generates property. Accordingly an inanimate being can have no property, through the want of the requiſite acts, from the effort with which an acquiſition originates, until *final* acceptance. But, according to the opinion of thoſe who maintain property veſted by mere gift *without acceptance*, a thing which is given to a deity, whoſe eſſence is a text of ſcripture, becomes the property of that deity. Let it not be aſked, by way of objection, what is the concluſion of thoſe who maintain the animation of deities? The apparent difficulty is reconciled, although deities, according to this opinion, be animated, by not admitting their acceptance of gifts. In like manner, inſects and the reſt have no property in water and other things conſecrated for the benefit of all beings.

Surrendry, intended to convey property to another, and attended by the effect of annihilating the property of the party himſelf, is gift. The accepter is not the agent in that act; therefore he is not the giver (*an abſurd conſequence objected by* JIMÚTAVÁHANA). Let it not be ſaid, the literal ſenſe of the verb "give" is obtained by including in it the conſequence produced of creating property veſted in another. That is prolix; for *the definition of* conſequence or effect is prolix in compariſon with that of intention or ſpecial object. Nor ſhould it be objected, that, if this be the caſe, it ſhould be ſaid, 'attended with the object of annihilating his own property;' why inſert "effect?" Were it ſo, conſequence not being included in the ſenſe of the term, "give" would be an intranſitive verb; ſince it could have

no ſubject ſuffering the effect denoted by the abſtract ſenſe of the verb*. Nor ſhould it be objected, that there is no ground for ſelection; the effect might be affirmed either of the giver's own property annihilated, or of another's property *created*. The law ſhowing that gift annihilates the giver's own property, there is a ground for ſelection. Nor ſhould it be alleged, that the words of MENU, "gift is a cauſe of ownerſhip," form a law which ſhows the production of property veſted in another. The difficulty is removed by inferring the production of property veſted in another, through the medium of the deveſture of property held by the former owner. Or, be it ſo; the ſubject may conſiſt ſolely in the object, like the phraſe 'he knows the jar.' Conſequently the verb "give" ſignifies *an act of* volition, to which the previous annihilation of the donor's own property is attributive, and which intends *the conveyance of* property to another: or it ſignifies ſurrendry effecting the inveſtiture of property in another, after annihilating the rights of the former owner. Accordingly the phraſe "he gives a cow," appears to ſignify, 'cancelling his own property, he makes the cow appertain to another.' The accepter is not the agent in ſuch a gift; for he is that other perſon, and he does not cancel the former property: and *thus* "cauſe of ownerſhip," in the text of MENU, bears a literal ſenſe. Hence the objection, that gift, as mentioned by MENU, would occur in the caſe of neglect occaſioning the property of another through the medium of annihilating the party's own title, is obviated; for, in this caſe, *neglect* becomes an immediate cauſe of property veſted in another. Even in the caſe of ſale and the like, there is no objection to this uſe of the verb; 'having received the price, he gives the cow.' In like manner, the verb "give" is properly uſed for the payment and advance of debts, "if the time of payment be not expreſſed, the debt ſhall be paid *(literally* given) on demand" (Book I, v. CLXVI); and, "let no man lend *(literally* give as a loan) any thing to women, to ſlaves, or to children" (Book I, v. VIII). But in the phraſe "give food to a twice-born man," and in ſimilar expreſſions, the verb ſignifies gift alone; and that may be known from the epithet, *or circumſtance*, deſcriptive of a moral purpoſe, not indicating ſale and the like. From the inſertion of ſurrendry or relinquiſhment *in the definition of gift*,

* Definition of tranſitive verbs.

the phraſe "he gives *or leaves his eſtate to his ſons*," cannot be uſed when a father dies, or becomes an anchoret. Yet, if the father at the point of death, or becoming an anchoret, declares, "ſo much wealth is left by me, let it belong to my ſons," it may in that caſe be ſaid, he died, or became an anchoret, after giving *or bequeathing* all his property to his ſons. Accordingly, in ſtating the etymology of *dáyabhâga* or inheritance, JÍMÚTAVÁHANA and others *thus* derive the word *dáya* heritage, that which is given *or bequeathed (díyatē)*. This, and the phraſe "he gives *or bequeaths*," are figurative; for they are ſimilar to the inveſtiture of property in another, after cancelling the property of the *former owner*, who is deceaſed naturally or civilly: there is not in that caſe a ſurrendry made by the deceaſed and the reſt. RAGHUNANDANA obſerves, there was not, on the part of the deceaſed, a ſurrendry effecting the annihilation of his own property, and conſiſting in his declared will, "this is no longer mine." The ſame author explains ſurrendry, declared will; and that ſignifies deſire or intention*. All this has been ſtated in conformity with the opinion of VÁCHESPATI BHATTÁCHÁRYA.

It differs from the opinion of JÍMÚTAVÁHANA, in maintaining that the right to a chattel, which is given, is not veſted before acceptance or approbation: this is deduced from minute reaſoning; and the argument is equal. Conſequently, aſſent is ſignified by the term approbation; as in the phraſe, 'philoſophers of the *naiyáyica* ſchool acknowledge a ſupreme ruler different *from the deities of mythology*.' The phraſe 'he accepts the chattel,' ſignifies, he aſſents to the property conferred on him by the donation, and does not neglect *or refuſe* it. It may be alſo affirmed, that acceptance is a mode of acquiſition through the medium of requeſt; but, in the caſe of an unſolicited gain, there is no difficulty, even though acceptance be not conſidered as acquiſition.

Granting this; may not a man appropriate at pleaſure an offering made by any perſon on the bank of the Ganges, without a declared acceptance in this form, "this ſhall be mine," but *merely* thinking "this is mine?" What objection is there? Or, *if objections be ſought*, the appropriation of an offering made by another,

* *Sancalpa*, thus explained as ſignifying will, ſeems alſo to be the neareſt term for teſtament. But ſtrictly, a laſt will and teſtament is unknown to the *Hindu* law. T.

ther; without previous acceptance, is indirectly forbidden by a text; "acceptance ſhould be avoided on the bank *of the river.*" This has been ſufficiently explained.

Property dependent on relation to the former owner, in that chattel of which the ownerſhip has expired, is heritage, a word deviating from its etymon. So JÍMÚTAVÁHANA *defines heritage.* The condition, "dependent on relation to the former owner," obviates the poſſible uſe of the word heritage in *ſpeaking of* gift and the like. That relation, originating from birth, ſtudy, marriage and ſo forth, is filiation, fellowſhip in ſtudy, conjugal union, or the like. The phraſe "of which the ownerſhip has expired," obviates the uſe of the term heritage, under the texts which deſcribe the concurrent property of the wife during the life of her huſband (CCCCXV &c.) SRÍ CRÍSHNA TERCÁLANCÁRA.

Since property reſiſts concurrent property, how can a wife have any title to the eſtate of her living huſband? The objection is ill founded; for, acknowledging the death of a father and ſo forth to become ſeverally cauſes of property immediately ſubſequent, he does not admit the *general* reſiſtence of one property to another. But, according to that opinion, it may be affirmed that marriage would unavoidably reſiſt a property which was different from that of ſuch a wife, and which would annihilate her former property. VÁCHESPATI BHATTÁCHÁRYA does not admit a property then veſted in the wife. This will be ſubſequently explained. According to his opinion, the words "of which the ownerſhip has expired," need not be inſerted.

Such is heritage *(dâya)*; and of this a partition *(bhâga)*, diſtribution, right, ownerſhip or property, muſt be underſtood according to the various opinions, as already noticed: and the verb *bhaj*, divide, occurs in the text of YÁJNYAWALCYA (CXIV) with the ſenſe of right or title. Accordingly MENU alſo expreſſes, "learn the law of inheritance *(dâyabhâga).*" Having declared the ſimple right of ſucceſſion (Ch. IX, v. CIV), and noticed cohabitation *of parceners* (from v. CV to v. CXI), he proceeds to the mention of partition (v. CXI). In thoſe texts, "after the death of the mother" (v. CIV), alludes to the ſeveral property of the mother: accordingly CULLÚCABHATTA remarks, on the expreſſion "paternal eſtate," that ſons alſo ſucceed to the maternal

eſtate. BAUDHÁYANA alſo ſimply declares the title of ſons to ſucceed to the paternal eſtate (III).

JÍMÚTAVÁHANA remarks, that the caſting of lots and the like, for the ſeveral rights of two or more ſons to their reſpective portions, (which rights were *previouſly* unaſcertained, ſince nothing determined that ſuch a chattel belonged to ſuch a perſon ;) aſcertains the ſeveralty, *which may be expreſſed in theſe words*, " this wealth belongs to this man :" that aſcertainment of ſeveralty, namely the caſting of lots or the like, is partition. But RAGHUNANDANA ſays, after the deveſture of property predicated of the ſons collectively, in reſpect of the collective wealth which devolves on them after the death of their father, property is ſeverally predicated of each ſon in reſpect of each chattel, *as determined* by lots or the like : or the caſting of lots, or other act which produces that conſequence, is partition of heritage. JÍMÚTAVÁHANA conceives, that, after the deceaſe of the father, and after the conſequent deveſture of his property, a right is veſted in his ſons, by reaſon of the connexion of filiation and ſo forth ; and this follows from the text of BAUDHÁYANA. Since the property of the ſons can only ariſe after the deveſture of their father's property, ſuch deveſture *is neceſſarily inferred* : now there is no argument to prove the deveſture of the co-ordinate property of ſons, and riſe of another *ſeveral* property ; although the texts, which notice partition, do ſuggeſt that *ſeveral property*, it would be difficult to eſtabliſh the failure of one property and riſe of another : therefore the property of each is eſtabliſhed in that which will become his by lot ; for his right, being imperceptible to the ſenſes, cannot be aſcertained otherwiſe than by caſting of lots : this alone conſtitutes partition. But RAGHUNANDANA thinks that the caſting of lots muſt be explained by logical inference : as fire is aſcertained from ſmoke by this argument, ' without fire there can be no ſmoke ; for what elſe cauſes it ?' ſo, without veſted property there can be no caſting of lots in the name of the proprietor, *for* there is no *other* proof of it. In the caſe of ordeal, as a natural efficacy is attributed to fire by this rule, ' fire burns the guilty alone, not the innocent ;' ſo, attributing a natural efficacy to lots thrown, ſhould it not be eſtabliſhed, that the lot falls to each for that of which he had the property ? No ; for, in the caſe of

trial

trial by ordeal, the texts of Sages eſtabliſh, that the innocent remain unhurt; but, in this inſtance, there are no grounds for the inference. If it may be ſaid, that is eſtabliſhed to avoid tedious difficulties, ſtill it is again a tedious difficulty to prove ſuch natural efficacy attributive to lots and the reſt. In like manner, to obviate the property of all *the heirs* in the whole eſtate, (which might be ſuppoſed, ſince their connexion was equal when the father deceaſed,) it is moſt difficult to eſtabliſh an impediment to ſuch property, becauſe that other individual property is previouſly negative*, *or has not yet exiſted.*

Again; it is univerſally agreed, that the acquirer ſhall have two ſhares, and any other heir one ſhare, of what has been acquired by a brother employing one of two horſes left by his father. On partition of the original wealth, ſhould that horſe fall by lot to him who acquired *this new wealth*, then, according to the opinion of thoſe who contend for diſtributive property *ſeverally veſted in each individual during coparcenary*, that horſe already belonged to the acquirer; why then ſhould another brother participate in the wealth ſo acquired by him? But if the horſe be obtained by a parcener other than the acquirer, the wealth ſo acquired ought to be equally divided; for it is gained by the exertion of one parcener, and by the labour of a horſe belonging to the other. On this 'SRÍ CRÍSHNA TERCÁLANCÁRA remarks, that there is nothing inconſiſtent with practice, becauſe the phraſe "employment of common property," intends only wealth, of which the *ſeveral* property is undetermined. Of theſe two opinions, that which is maintained by RAGHUNANDANA, who contends for co-ordinate property, is confirmed by HERINÁT'HA, by the author of the *Mitácſharà*, by VÁCHESPATI MISRA, BHAVADÉVA and others. This very opinion is indirectly admitted even by 'SRÍ CRÍSHNA TERCÁLANCÁRA.

Should any one brother ſell the female ſlave on a day which falls within his allotment (CCCLXVI 5), may the purchaſer afterwards require the labour of that ſlave on the days allotted to other brothers? To this queſtion the anſwer is, when a ſale is

 made

* *Prágabhàva:* antecedent privation. Privation is relative or abſolute; the laſt is of three ſorts: antecedent privation, affirmed of what has not yet been; annihilation, affirmed of what has ceaſed to be; utter privation, affirmed of that which now is not, and in which paſt or future exiſtence is not conſidered. T.

made, the purchaſer has a property ſimilar to that which the vender enjoyed: hence, the purchaſer can only obtain *the labour of the ſlave* on thoſe days of each month which were allotted to the vender in proportion to his ſhare. Accordingly, when a principality is ſold, the prince has property entitling him to receive revenue; but the property of the occupant, entitling him to enjoy the produce *of the land*, ſubſiſts in full force: when the produce is ſold by the occupant, the purchaſer acquires a right to enjoy it, but the king retains his title to receive revenue. Hence, he who cultivates land for which he pays revenue to the king, and who enjoys the produce obtained from that land, is acknowledged to poſſeſs property as cultivator *of the ſoil;* if he ſell the land, the purchaſer acquires ſimilar property, in right of which he enjoys the produce after paying revenue to the king. The cultivator is not deſtitute of ownerſhip; for that would be inconſiſtent with practice. Conſequently, various concurrent rights to one and the ſame thing being admitted, it muſt be eſtabliſhed, that property is an impediment to other property of the ſame nature. This has been alſo ſtated by 'SRÍ CRÍSHNA TERCÁLANCARÁ, *in theſe words*; 'for thoſe two concurrent rights of the ſame nature are incompatible.'

ART. II.—*On Succeſſion of Sons.*

III.

BAUDHÁYANA:—Male iſſue by males *as far as the third degree* being left, the eſtate of the father ſurely muſt go to them *.

This text of BAUDHÁYANA propounds the ſucceſſion of ſons to their father's eſtate: and that ſucceſſion only takes place after their father's demiſe; for MENU declares, that ſons may divide the paternal eſtate after the death of the father.

IV.

* See the context at V. CCCXCVII.

IV.

MENU :—After the death of the father and the mother, the brothers, being aſſembled, may divide among themſelves, in equal ſhares, the paternal *and maternal* eſtate; but they have no power over it while their parents live, *unleſs the father chooſe to diſtribute it.*

Here their title is equal; that is, a deduction of a twentieth part or the like is allowed by other brothers, through affection, and to preſerve due reſpect, becauſe elder brothers and the reſt are venerable. CHANDÉSWARA, CULLÚCABHATTA, VÁCHESPATI MISRA, JÍMÚTAVAHANA, RAGHUNANDANA and the reſt obſerve, 'by the term "divide" partition is intended; from 'ordaining partition after the death of the father, it follows that 'ownerſhip veſts after his death, elſe why ſhould they not di-'vide *the eſtate* earlier?' Equal partition is here mentioned, ſuppoſing an eldeſt brother who is deficient in virtue, or who does not claim a deduction; for, the deduction of a twentieth part concerns an eldeſt brother endued with virtue, or intends an eldeſt brother claiming that deduction. Such is their meaning. UDAYACARA remarks, on the word 'equal,' that an equal partition ſhould be made, after firſt deducting a twentieth part *for the eldeſt brother.* HELAYUDHA and the *Párijáta* read *ſaha*, with, inſtead of *ſamam*, equal; and "with" is expounded in the *Párijáta*, mutually, *or among themſelves.*

"Paternal," or parental; this derivative, from a term expreſſive of both father and mother, (the laſt being underſtood,) ſignifies paternal and maternal. It is ſo expounded by HELÁYUDHA, CHANDÉSWARA, VÁCHESPATI, BHAVADÉVA, and others; and CULLÚCABHATTA entertains the ſame notion. A diſtinction in regard to the ſucceſſion of ſons to their mother's property will be ſubſequently mentioned. 'Others, ſays CHANDÉSWA-'RA, conſider "paternal," or parental, as alſo ſignifying definitively what deſcends from a paternal grandfather; for partition 'is alſo ſuggeſted in that caſe' (CCCLXVIII). We hold, that,

as

as " diſtribution of the paternal eſtate inſtituted by ſons" (I), is merely illuſtrative of any relation, ſo are the terms of the preſent text (IV), " after the death of the father and the mother," and, " the paternal eſtate:" conſequently, it is only after the death of him whoſe eſtate may be divided as heritage, that partition is made. Such is the meaning of the text. But JÍMÚTAVÁHANA, RAGHUNANDANA, and others, argue, from the expreſſion " *after the death* of the mother," that ' partition among ſons, while their mother lives, is immoral; as is intimated by the text of SANC'HA and LIC'HITA (XVII).' They conſider the text of SANC'HA as ſignifying, that, ſince ſons are not their own maſters while their mother lives, a partition ought not to be made without her conſent, for ſhe is moſt venerable; and the text of MENU muſt be alſo adduced for the ſame purpoſe. Here ſome lawyers infer, from the phraſe " they have no power over it while their parents live," that they have a title in the eſtate while the father lives, but cannot appropriate it at pleaſure without his command. But JÍMÚTAVÁHANA has ſaid, ' there is no proof of property then veſted in ſons.' DÉVALA expreſsly declares it:

V.

DÉVALA:—After the death of the father, ſons may divide his eſtate; but they have not ownerſhip, *or full dominion*, while a faultleſs father lives.

By the mention of faultleſs it is intimated, that, ſhould a blameable father be living, ſons have ownerſhip of his eſtate: it follows, that property is deveſted through faults. The very ſame expoſition is delivered by RAGHUNANDANA and others. NÁREDA may be quoted in anſwer to the queſtion, what deſect?

VI.

NÁREDA:—The father being degraded, or become an anchoret, or having reſigned, or deceaſing naturally, his ſons may divide his eſtate.

" Degraded;"

"Degraded;" fallen *from his class.* RAGHUNANDANA.

Consequently, even degradation is suggested by the word defect.

"Become an anchoret;" quitting the order of a housekeeper.

"Having resigned;" though his title subsist, having no wish to retain the property vested in him. RAGHUNANDANA.

For this shows that sons have property in their father's estate, through his resignation or the like. JÍMÚTAVÁHANA.

But CHANDESWARA explains the term, 'void of desire for *worldly* concerns.' He reads the text *nivrĭttē vā'pi ramaṅē pitary-uparata-sprĭhē**, instead of *vinashtē vā'py-aśaranē pitary-uparata-sprĭhē;* and expounds that reading 'capable of connubial intercourse, but refraining from it.' MISRA delivers a similar exposition. HELÁYUDHA reads *nivrittē vāpi maranāt:* that has been expounded by JÍMÚTAVÁHANA as an epithet of the subsequent term, 'exempt from disease, (that is, alive,) *but resigning.*' Another reading is approved by the author of the *Pracáśa*, but is not noticed by JÍMÚTAVÁHANA. In his opinion, the devesture of the father's property, in the case of resignation, is expressly declared. According to CHANDÉSWARA and others, the same must be deduced *from the premises.* But, according to RAGHUNANDANA, the right subsists even in the case of one who ceases to desire property.

There is a cessation or failure *(uparama)* of affection *(sprĭha)* or desire for worldly concerns. Now that occurs continually, for the duration of wish or desire is limited to two moments; it must therefore be affirmed to be the cessation of final desire. Such being the case, a father has at first withdrawn from *temporal* concerns; and having thus resigned *worldly* affairs, he afterwards again desires *temporal* concerns: in such a case, is the father's resignation *irrevocable?* In answer to this question, the same author observes, that property being devested through abdication, cannot be revived by subsequent desire. He thus defines a resignation adapted to this purpose: 'annihilation of desire, not contemporary with antecedent privation of *any* desire contemporary with property, is resignation.' Consequently, so many wishes as passed previous to abdication, as well as antecedent privation

* With this reading it forms the last hemistich of the text subsequently cited (XCVIII).

privation of future wiſhes, were contemporary with property; for the right was not deveſted, ſince it had not been then abdicated: the wiſh which is not contemporary with ſuch antecedent privation, is the laſt of wiſhes anterior to abdication; the ceſſation of that is reſignation: and in like manner, no wiſh is again formed in the interval which follows ſuch final wiſh for worldly concerns; abdication takes place thereafter: whether deſire will or will not be ſubſequently revived, partition may be made by ſons when ſuch deſire has *once* ceaſed. Thus ſome explain RAGHUNANDANA's meaning.

That is not *tenable;* for ſons cannot make a partition of their own accord while the father's right of property ſubſiſts: having reſigned, and withdrawn from worldly concerns, he forms no wiſh of partition; the diſtribution cannot be that which is made by the father; and, without abdication, it cannot be known that the laſt wiſh for worldly concerns has been formed. In fact, reſignation annuls property, and it is ultimately the ſame with abdication; for the ceſſation of wiſh for worldly concerns, accompanied by a declaration in this form, "henceforward I will not act in *worldly* affairs," annuls the right of property: afterwards, when four years have elapſed, if he again deſire worldly concerns, ſtill property is not revived. Again; ſince there is antecedent privation of that wiſh which will be formed after the lapſe of four years, the epithet "contemporary with property," has been ſubjoined to deduce reſignation from the ceſſation of deſire contemporary with that declaration. Again; ſince the failure of property takes place at a moment ſubſequent to the ceſſation of deſire contemporary with that declaration, it is ſaid, "even though the property ſubſiſt," to authorize partition at the moment when deſire ceaſes. This ſome allege: but it is unſatisfactory, for it is liable to the ſame objection. Hence the opinion of JIMÚTAVÁHANA and the reſt ſeems accurate. "Having reſigned," explained as ſignifying void of wiſh for the uſe of women, correſponds with the text, "when their mother is too aged to bear more ſons" (XX), even though the *preſent* text be not read *nivrittè vápi ramané*, or refraining from amorous delights.

However, ſome lawyers think partition among ſons authorized by law, even though the father's title ſubſiſt, when it is any-how

known that the wiſh for worldly concerns has utterly ceaſed. But the father's property does then ſubſiſt, ſince he has not abdicated by a declaration in this form "it ſhall no longer be mine," nor has deceaſed, or otherwiſe vacated his eſtate. Let it not be objected, that no partition could be made while the father's property ſubſiſted. The law has authorized partition even in the caſe of one who ceaſes to deſire property; and by that term is ſignified the utter failure of *ſuch* wiſh. But if the owner, having entertained no wiſh during a certain ſpace of time, afterwards deſires worldly concerns, there was no reſignation. After withdrawing his affection *from things of this world*, if he abdicate his eſtate in this form "let this be no longer mine," then indeed property is deveſted by abdication: and afterwards, even though *temporal* inclinations revive, property is not renewed. With this view it is ſaid, "contemporary with property." The reſignation can only be known from the declaration of the party. Thus the opinion of RAGHUNANDANA is juſtified. Abdication is comprehended in the text, by conſidering the terms as illuſtrative of a general ſenſe; or included under the term "anchoret," explained in the ſame manner in which the text of HÁRÍTA (XXIII) is expounded by the author of the *Pracáśa;* living on the wealth and under the rule of his ſons, without becoming a recluſe according to the *Véda*.

In the caſe of degradation, forfeiture of property muſt be underſtood when the offender is averſe from expiation; for the gift of their whole eſtate is recorded as an expiation for degraded perſons. RAGHUNANDANA, ŚRÍ CRÍSHNA TERCÁLANCÁRA, and others.

But VÁCHESPATI BHATTÁCHÁRYA holds, that a degraded man, and an anchoret, only forfeit property previouſly veſted *in them;* elſe the laws which forbid the receipt of preſents from a degraded man, and which ſhow the ſucceſſion of heirs to the eſtate of a *(ſannyáſi)* or devotee in the fourth order, would have no authority. Again; the right to former wealth being forfeited, even though he be not averſe from expiation, that expiation may be nevertheleſs accompliſhed with money ſubſequently begged from ſons or others; and it cannot therefore be ſaid that the expiation can no otherwiſe be accompliſhed.

Here it ſhould be noticed, that, if the property of a degraded man

man be deveſted, even though he be deſirous of expiation, he does not, after performing penance, become owner of wealth, his right to which was forfeited at the moment of degradation: for there is no argument to prove ownerſhip then *revived;* and to hold it admiſſible, would contradict approved uſage. Conſequently, *even* in the caſe of averſion from penance, degradation is the *ſole* cauſe of forfeiting property which was veſted before the loſs of rank; and this is founded on the inconſiſtency with approved uſage, *which is objected to the contrary inference*. In the caſe of a recluſe likewiſe, abdication ſolely annuls property: retirement cannot be eſtabliſhed as an independent cauſe of annulling it. "Or the father deceaſing naturally, his ſons may divide his eſtate" (VI): by mentioning partition among ſons after the natural deceaſe of the father, it is curſorily intimated by NÁREDA, that property is immediately veſted in them.

VII.

SANC'HA and LIC'HITA:—Since partition of the eſtate takes place after his deceaſe, ſons cannot divide it while the father lives, even though it were acquired by them independent of him; they have no power *to make ſuch a partition*, ſince they are not their own maſters in reſpect of wealth or religious duties.

"After his deceaſe;" after the death of the father. "Partition;" diviſion of heritage. The word "only" cannot be here ſupplied; ſince partition is ſeen *in practice*, even while the father is living, by his choice: may ſons therefore divide the eſtate while the father lives? The Sage replies, "ſons cannot divide the eſtate while the father lives:" they cannot then divide it without his conſent. But ſome expound the text, *by* completing the cauſe aſſigned; 'ſince ſons are only entitled to the heritage when their father is deceaſed, therefore they ſhall not divide the eſtate while he lives.' "Acquired independently of him:" this is explained in the *Retnácara*, 'acquired by united efforts in ſcience or the like,

like, independently of the father.' The meaning is, that the term ſuggeſts this ſenſe; 'acquired by them independent of their father.' To ſatisfy the queſtion, how can any thing be acquired independently of him? the commentator adds, by united efforts in ſcience or the like. Yet the ſame muſt alſo be admitted without united efforts: we cannot determine what is the uſe of this inſertion.

VIII.

HÁRÍTA:—While the father lives, ſons are not independent in reſpect of the receipt, alienation, and recovery of wealth; but if he be prodigal, abſent in a remote country, or afflicted with diſeaſe, let the eldeſt ſon manage the affairs.

"Receipt of wealth;" taking common property without reference to the father. The *Pârijâta* expounds it 'acquiſition.' Conſequently, without the aſſent of his father, a ſon ſhould not do any act for the acquiſition of wealth. He is therefore not independent in reſpect of property then acquired: that is, the preſent text has the ſame import with the text above cited. "Alienation;" gift. "Recovery;" obtaining money from the hands of a debtor. In reſpect of theſe things, ſons are not independent; they are not capable of acting without their father's aſſent. "Prodigal;" giving *money* away for his own pleaſure only; diſpoſed to make gifts on the ſole ſuggeſtion of his own will, without attending to the gain or loſs of merit and riches. 'If the father be ſuch' muſt be ſupplied in the text. Such is the expoſition approved by CHANDÉSWARA. The mention of management intruſted to the eldeſt ſon when the father is prodigal, ſhows his ſuperior authority above the reſt in reſpect of their affairs: no other can oppoſe the owner of wealth who gives it away at his own pleaſure. Yet, it muſt not be ſuppoſed that the eldeſt ſon's management only is ordained, not oppoſition to prodigal waſte. Since management intruſted to the eldeſt ſon, being mentioned, ſhows that the father is deprived of the management, it follows that the father has not the effects in his power. The author of the *Pracáśa* reads *cúman dine*, inſtead of *cámadáné*; and explains

explains it, 'ſolely by the choice of the father, if he be deſpondent.' This reading is noticed by JÍMÚTAVAHANA.

It appears from the text of HÁRÍTA, that if the father be living, but any-how diſqualified for buſineſs, the eldeſt ſon has a right to manage the affairs. MENU *alſo* declares, that the eldeſt ſon alone ſhall conduct the affairs like a father, although the title of all the brethren to that eſtate be equal.

IX.

MENU:—The eldeſt brother may take entire poſſeſſion of the patrimony; and the others may live under him, as *they lived* under their father, *unleſs they chooſe to be ſeparated.*

Having premiſed *that* "*brothers may divide the paternal eſtate* after the death of the father and the mother," *he proceeds* to declare, that "the eldeſt brother may take entire poſſeſſion of the patrimony;" that is, the eldeſt endued with all the moſt eminent virtues, ſhall have power, like a father, over the inheritable patrimony. The *Retnácara.*

Conſequently, the title of the eldeſt ſon alone to poſſeſs the whole eſtate after the father's deceaſe, is propounded. Since the preceding text (IV) had ſhown the ſucceſſion of ſeveral ſons, the others muſt live under him, receiving food and veſture. This muſt be ſupplied in the text. Hence his younger brothers ſhould incur no expence whatſoever without his conſent.

"The others may live under him;" that is, they ſhould ſo behave as they are guided by his conduct. The *Retnácara.*

This is a rule for parceners living together. If all the ſons have an equal title to the patrimony, why ſhould the eldeſt ſon alone exerciſe authority over it? To this queſtion the ſame legiſlator replies;

X.

MENU:—By the eldeſt, at the moment of his birth, the father, having begotten a ſon, diſcharges his debt

debt to his own progenitors; the eldeſt ſon, therefore, ought, *before partition*, to manage the whole patrimony:

2. That ſon alone, by whoſe birth he diſcharges his debt, and through whom he obtains immortality, was begotten from a ſenſe of duty: all the reſt are conſidered by the wiſe as begotten from love of pleaſure.

"Having begotten a ſon;" being relieved from the evil attendant on the want of male iſſue: and that evil is ſuggeſted by the ſcripture, which declares, that a bliſsful region is not attained if male iſſue be wanting; that is, a place of purity is miſſed.

CULLÚCABHATTA.

Accordingly it is mentioned in the *Mahábhárata*, towards the end of the firſt book, that the ingreſs of the ſage MANDAPÁLA into a region of purity was prevented by the want of male iſſue; for the ſame poem ſhews that the debt to his progenitors, undiſcharged, is the ground on which a man is excluded from the bliſsful region, even though his conduct have been virtuous. In this caſe it therefore appears, that the debt to progenitors is diſcharged when a ſon is begotten. The Sage expreſsly declares it; "by the eldeſt, at the moment of his birth, the father diſcharges his "debt to his own progenitors." By theſe terms, "at the moment of his birth," it is intimated, that the ſon's performance of rites ordained by the *Véda*, and his ſacraments and the like, are not requiſite *to this effect*. Accordingly, ſhould the ſon die immediately after birth, ſtill his father is exonerated from debt *to his progenitors*. The ſcripture ſhows, that the debt continues while no ſon is born, and is diſcharged by the birth of a ſon. For this reaſon he ought to take entire poſſeſſion of the patrimony. But this is *mere* commendation of the eldeſt ſon, not in effect declaring his property in the whole eſtate; for a former text propounds the equal title of all ſons. Since the authority of one ſon over all *the reſt* muſt be eſtabliſhed, that commendation is a ground of ſelection, and an argument whereby the authority of the eldeſt ſon alone is eſtabliſhed. "The eldeſt ſon was begotten from a ſenſe of duty;" he produces merit whereby bliſs in a region of felicity is

attained. By this phraſe, the Sage again celebrates an eldeſt ſon, by whoſe birth the father diſcharges his debt, or on whom he devolves the load of debt, and through whom he obtains immortality, or perpetual delight, becauſe he is relieved from debt. But ſome remark, that immortality is obtained through a grandſon, as declared in the following text, which is thus expounded by CULLÚCABHATTA: 'by a ſon a man conquers all worlds, the celeſtial abode and the reſt; through a ſon's ſon he remains there long:' conſequently this ſenſe is ſuggeſted, "through the eldeſt ſon of his eldeſt ſon he obtains an endleſs abode."

XI.

MENU:—By a ſon, a man obtains victory over all people; by a ſon's ſon, he enjoys immortality; and, afterwards, by the ſon of that grandſon, he reaches the ſolar abode.

CULLÚCABHATTA has expounded "obtain immortality," become exempt from death; and has quoted the authority of the *Vêda*. In this text (X 2) the devolving of the debt on the eldeſt ſon is mentioned as a cauſe which produces merit, whereby the gates of a bliſsful region are opened to the father. Hence there is no vain repetition. "The reſt are conſidered by Sages as begotten from love of pleaſure;" as procreated by one who embraces a woman *ſolely* for the enjoyment of pleaſure. This is merely figurative; for a text expreſſes, "many ſons are to be deſired, that ſome one of them may go to *Gayá*."

That being the caſe, ſhould the eldeſt ſon, by force or artifice, take the whole eſtate, would there be no offence? Not ſo; for the ſame Sage thus proceeds:

XII.

MENU:—As a father ſhould ſupport his ſons, ſo let the firſt-born *ſupport* his younger brothers*; and let

* Chap. IX, v. 108. The difference in tranſlation is ſlight. Sir W. J. muſt have read *pitaiva*, inſtead of *pitéva*.

let them behave to the eldeſt, according to law, as children *ſhould behave* to their father.

Let the firſt-born ſupport his younger brothers, in like manner as a father ſhould ſupport his ſons; let him not defraud them: and let them behave to him as ſons; and not bear him malice.

XIII.

MENU:—The firſt-born, *if virtuous*, exalts the family; or, *if vitious*, deſtroys it: the firſt-born is in this world the moſt reſpectable; and the good never treat him with diſdain.

He exalts the family by proper acts; if the younger brothers be ſupported, the family is exalted: or he deſtroys it *by miſconduct*; this is merely a *ſuppoſed* poſſibility. The *Retnácara*.

It is merely a ſuppoſed poſſibility; for, though unſupported *by him*, if they are by any *other* means maintained, the family cannot be deſtroyed. But CULLÚCABHATTA thus comments on the text: 'in whatever path of vice or virtue the eldeſt brother walks, that ſame path do his younger brothers follow; by virtuous proceeding the family is exalted, by vitious proceeding it is deſtroyed: and the virtuous firſt-born is moſt reſpectable in this world, and never ſlighted by the wife.'

XIV.

MENU:—If an elder brother act as an elder brother ought, he is *to be revered* as a mother, as a father; and even if he have not the behaviour of a good elder brother, he ſhould be reſpected as a *maternal uncle or other* kinſman.

"As a mother:" by thus mentioning his parity with a mother, it is intimated, that the firſt-born may take poſſeſſion of the maternal eſtate. In like manner, even in other caſes of eſtates left

by relatives, *the eldeſt brother may take entire poſſeſſion.* This obſervation of ſome lawyers is queſtionable. "The behaviour of a good elder brother" conſiſts in the ſupport of his brethren and the reſt. Even though he neglect that, he ſhould be revered, but *only* as a kinſman, ſuch as a maternal uncle and the reſt: obedience to his commands is not required.

XV.

Let not an elder brother preſent ornaments to his wife, without giving *due maintenance* to his younger brothers.

Literally, a nuptial preſent; expounded by HELAYUDHA, ornaments of a wife and the like.

XVI.

NÁREDA:—Let the eldeſt brother ſupport, like a father, all the others, who are willing *to live together without a partition;* or even the youngeſt brother, *if all aſſent, and* if he be capable of buſineſs: capacity for buſineſs is the beſt rule in a family.

But if the eldeſt ſon be incapable, and the middlemoſt, or another, be capable of buſineſs, he alone has authority over the whole patrimony; for he is able to ſupport the reſt. Thus the Sage adds, "capacity for buſineſs is the beſt rule in a family;" *the beſt rule* regards capacity for buſineſs, or ability to ſupport *the family.* Conſequently, ſeniority by age is not an indiſpenſable requiſite. If the management of the whole patrimony go with capacity alone, is not the commendation of the firſt-born, as delivered by MENU, improper in this place? *This may be anſwered by aſking,* is the management of the whole patrimony conferred by ſuch commendation alone? for ſupport is alſo ordained (XII). Conſequently, if two ſons, or all the ſons, be capable of buſineſs,

to ſhow that *in that caſe* the firſt-born alone ſhall have the management of the whole eſtate, although another ſon be alſo capable of ſupporting *the parceners*, the commendation of the firſt-born has been pronounced.

XVII.

SANC'HA and LIC'HITA:—Should the father be incapable, let the firſt-born manage the affairs; or the next ſon experienced in buſineſs, if the father aſſent. Not without the father's conſent, can a partition of the property be made. If he be old, if his faculties be impaired, or if he be afflicted with a chronick diſorder, let the eldeſt ſon, like a father, protect the property of the reſt; truly the *ſupport* of the family depends on the patrimony: ſons who have parents living are not independent, nor even *after the death of their father* while their mother lives.

"The next;" the middlemoſt; or, ſhould he alſo be incapable of buſineſs, the ſon born after him: ſuch is the order. "If he aſſent to it," is expounded in the *Retnácara*, with the approbation of the eldeſt ſon: we explain it, with the conſent of the father. Thus the truſt of ſupporting the family is mentioned as devolving on the firſt-born and the reſt ſucceſſively; the care of the property, when the father becomes old or the like, is ſubſequently mentioned: there is, conſequently, no vain repetition. Here alſo ſeniority is not invariably required; but he alone who is experienced in affairs ſhould take care of the property. In naming the eldeſt, it is ſuppoſed that every brother, or the eldeſt at leaſt, is experienced in buſineſs. Conſequently, as the eldeſt, the next born, or the youngeſt, ſhould ſupport the family and protect the property while the father is living, *but diſqualified*, ſo ſhould the ſame be alſo affirmed after his deceaſe. The firſt-born is here ſuppoſed to be living, for the text mentions "the next ſon:" by this term *(anantara)* is ſignified one born immediately

diately after him; elſe it would have been ſaid, another brother. The commendation of the firſt-born, as delivered by MENU, ſuppoſes him to be living.

"If his faculties be impaired" (XVII); if his intellect be diſturbed by *vitiated* air or the like. The *Retnácara.*

The Sage mentions a reaſon for the indiſpenſible neceſſity of protecting the property through the eldeſt or other ſon, when *the father* himſelf is incapable; "the ſupport of the family depends on the patrimony."

"Sons are not independent;" they have no power to aliene *property* by gift or the like. They are alſo not independent while their mother lives, and is virtuous. The *Retnácara.*

Without her conſent, they have no power to aliene *property* by gift or the like. Since the mother has no property in the eſtate after the father's deceaſe, ſons alone could have aliened it by gift or the like. This text is delivered as an argument, by way of example. Conſequently, ſuch is the mode in which ſons ſhould live together after their father's deceaſe: and that *is* only *enjoined*, if all conſent; elſe a partition muſt be made.

XVIII.

MENU: — Either let them thus live together, or, if they deſire *ſeparately to perform* religious rites, let them live apart; ſince religious duties are multiplied in ſeparate houſes, their ſeparation is therefore legal, *and even laudable.*

"Thus *live together:*" although their title to the patrimony be equal, the reſt ſhould appoint any one brother, the firſt-born, or another, to govern the whole; they ſhould conduct themſelves with proper behaviour, according to his directions: let them thus live together. Or, if they deſire to multiply religious duties, let them live apart. We ſhall comment on this text in the chapter on Partition made by Sons.

XIX.

XIX

SANC'HA and LIC'HITA:—Willingly let them live together; by union they exhibit thrift.

By their union, that is, by their mutual aſſiſtance, they exhibit or diſplay thrift; that is, they thrive. The *Retnácara*.

SECT. II.—*On the Portion of an Elder Son in a Partition made by a Father.*

Since the text of SANC'HA and LIC'HITA (XVII) ſhows that partition may not be made without the father's conſent, it appears that partition ſhould be made if the father chooſe to divide the eſtate. Hence partition among ſons, even though their father be living, does take place, but founded ſolely on the father's choice.

XX.

GÓTAMA:—After the death of the father, the ſons may divide his eſtate; or while the father lives, if he chooſe to divide it, and if their mother *or any other wife* be too aged to bear more ſons.

"After the death of the father, the ſons may divide his eſtate:" this intends partition made by ſons. That title will be diſcuſſed *. "If their mother be too aged to bear more ſons:" this ſuppoſes an eſtate inherited from the paternal grandfather.

JIMÚTAVÁHANA, RAGHUNANDANA, and others.

That ſhall alſo be hereafter explained. The text muſt be ſupplied; "while *the father* lives," and "if he chooſe *to divide it*."

* Chap. III.

XXI.

SANC'HA and LIC'HITA:—While the father lives, the eſtate may be divided, with his conſent, openly, *in the preſence of arbitrators*, or privately, *by a mutual adjuſtment*, according to law.

"With his conſent;" with the conſent of the father.

CHANDÉSWARA and others.

Conſequently the two legiſlators expreſsly declare, that, while the father lives, the eſtate can only be divided with his conſent, "Openly;" that is, in the preſence of arbitrators. "Privately;" without the intervention of arbitrators, by a mutual adjuſtment only, but according to law.

XXII.

BAUDHÁYANA:—With the father's aſſent, a partition of heritage may be made.

Wherefore ſhould a father, who lives happily with ſons and the reſt, deſire partition? To this HÁRÍTA replies:

XXIII.

HÁRÍTA:—A father, making a complete partition even during his life, may either go to the foreſt *as a hermit*, or enter at once into the *fourth* order, *or that* of an anchoret; or he may divide a ſmall part of his fortune *among his ſons*, and remain in his houſe, keeping the greater part of it, *but without concealing any portion of his wealth*: ſhould he loſe, *by ſome calamity*, what he reſerved, he may take back from them, for his maintenance,

what

ROYAL ASIATIC SOCIETY BOMBAY BRANCH

what he gave; but he muſt *give a* portion *to* ſons reduced to indigence.

"May go to the foreſt;" may enter into another order. The author of the *Pracâśa* explains the ſubſequent term *(literally* "the order ſuitable to an aged man") 'living on the wealth and under the rule of his ſons, without becoming a recluſe, according to the *Vêda**.' HELÁYUDHA and the *Pârijâta* expound the term as ſignifying the fourth order: in their opinion the preceding term, "go to the foreſt," is reſtricted to the hermit *or third order*. But in fact, as is obſerved in the *Retnâcara*, the disjunctive particle being indeterminate, other legal forms *of retirement*, beſides the ſecluſion of a hermit, or of an aged man *abiding in the houſe of his ſon*, do alſo occur. Hence a father may *alſo* retire to the bank of the Ganges, or other holy place, ſubſiſting on alms or the like. Intending to enter into another order, a father reflects, "when I am no longer preſent, my ſons, contending for wealth, will be ruined by mutual injuries; I muſt therefore divide the eſtate amongſt them." This and other *occaſions* may be underſtood. But when a father, wearied by the mutual conteſts of his ſons in regard to the fruition of the eſtate, divides the eſtate among them and reſides at home, determining, "I will live apart, reſerving a ſufficient portion for myſelf;" then the legiſlator ſays, "he may divide a ſmall part of his fortune." Conſequently he may divide an inconſiderable part among his ſons, and they may gain other property and ſupport themſelves: but the father, being old, and of courſe unable to labour, may reſerve a conſiderable ſum ſufficient for his own ſupport and for religious purpoſes, and may *thus* reſide at home. However, he muſt practiſe no fraud. But if, in conſequence of any accident, his wants cannot be ſupplied out of the property reſerved, however conſiderable it might have been, then the lawgiver declares, "ſhould he loſe what he reſerved, he may take back from them, namely from his ſons, what he gave." The reaſon is, that no duty is more ſtrictly incumbent on ſons and the reſt, than veneration of parents: and if the purpoſe cannot be fulfilled even with the whole of the wealth acquired *and diſtributed* by the father, they muſt even give wealth acquired by themſelves.

* See MENU, Chap. VII, V. 86 and 94.

themſelves. "But he muſt portion ſons reduced to indigence:" if any of his ſons be incapable *of maintaining themſelves*, he muſt ſupport them out of his own property *which he reſerved*.

XXIV.

NÁREDA:—Or even the father, being advanced in years, may himſelf divide the eſtate among his ſons, giving to the firſt-born the beſt portion, or in any mode which he ſhall chooſe.

The particle "or" denotes an alternative; either the father or the ſons may divide the eſtate. Conſequently the ſenſe is, when the father has reached old age, his ſons may make the partition with his conſent. Or this other caſe may be the partition, which is made after the death of a father. "Being advanced in years;" at any period in the ſecond or third ſtages of life, and ſo forth*: ſuch is the ſenſe. Accordingly GÓTAMA ordains a *ſecond* partition when a ſon is born after partition has been made. "The beſt portion;" a greater portion; the deduction of a twentieth part ordained by MENU, or other ſuitable portion. The ſame ſhould be alſo underſtood in reſpect of the middlemoſt and the reſt. This concerns eldeſt ſons and the reſt endued with virtuous qualities. The very ſame expoſition is delivered by RAGHUNANDANA and others. CHANDÉSWARA explains "beſt" moſt excellent, greateſt. The form of a deduction equal to the twentieth part of the eſtate will be explained. "Or in any mode which he ſhall chooſe:" he may reſerve any part he chooſes, or give more to any one of his ſons, and leſs to another.

XXV.

VISHNU:—If a father make a partition between himſelf and his ſons, he may give or reſerve, at his pleaſure, any part of his own acquired wealth; but over *landed* property left by a paternal grandfather,

* Infancy is the firſt ſtage; the cloſe of life is the fourth. T.

father, the father and the ſons have equal dominion.

This concerns wealth acquired by the father without uſing the patrimony which had deſcended from his own father.

CHANDÉSWARA.

What has been acquired without adventuring the patrimony, a father has power to diſtribute in equal or unequal ſhares.

MISRA.

And that is reaſonable; *for*, what is gained on the adventure of property left by his father, being conſidered as an acquiſition of his father, by means of that property *adventured*, is deemed *a part of* his patrimony. *But* it may be objected, that, if a man recover, by his own labour, the property of his grandfather, which had been ſeized by a ſtranger, it is treated as property acquired by himſelf; yet wealth gained by his own ſkill and labour, with the uſe of an inconſiderable portion of the wealth left by the grandfather, is conſidered as a part of the patrimony deſcending from the grandfather: this appears unequal.

XXVI.

YÁJNYAWALCYA:—If the father make a partition among his ſons, he may give, at his pleaſure, *more to ſome and leſs to others*, or give the firſt-born the portion of an eldeſt ſon, or divide the eſtate among all of them in equal ſhares.

This text declares three caſes: 1ſt, At his pleaſure, he may give more to ſome and leſs to others; 2dly, He may give the firſt-born the portion of an eldeſt ſon; 3dly, He may give equal ſhares to all his ſons. Unequal diſtribution is not prohibited in the caſe of partition made by the father, as it is in that of partition made by ſons: to declare this, and other points, another text will be delivered. There is conſequently no vain repetition. Some remark, that partition cannot be made at the option of ſons, ſince they have no property *in the eſtate* while the father lives. Hence, as is obſerved in the *Dipaçalicá*, *the term* "at his pleaſure" denotes,

notes, that the diſtribution ſhould be made at the pleaſure of the father, not of the ſons. The ſame legiſlator propounds unequal diſtribution in another text (XXXIII): hence both opinions may be received under the ambiguous ſenſe of the phraſe, ſince other Sages propound both *rules*. In none of the three caſes is the diſtribution *made* at the pleaſure of ſons; and the reaſon of that is their want of ownerſhip. This, however, concerns wealth acquired by the father himſelf; for a different rule will be propounded (XCII) in reſpect of property deſcending from the grandfather. Such is the opinion intimated in the *Retnácara*.

Although a father have power to give, at his pleaſure, more to ſome and leſs to others, when he diſtributes wealth acquired by himſelf, ſtill an unequal diſtribution muſt not be made through partiality, reſentment, or the like.

XXVII.

CÁTYÁYANA:—If a father, during his life, divide the property, he ſhall not prefer one of his ſons, nor exclude one of them from a ſhare, without a ſufficient cauſe.

"Without a ſufficient cauſe," ſuch as duty and piety, a large family to maintain, or inability *to earn his livelihood* and the like (as explained on the concurrent opinions of JÍMÚTAVÁHANA and the reſt), he ſhall not prefer one ſon, or diſtinguiſh him by aſſigning to him a larger portion; nor ſhall he exclude one of his ſons from a ſhare, or diſinherit him, without a ſufficient legal cauſe of excluſion, ſuch as degradation and the like, or ſpontaneous relinquiſhment of his ſhare. In like manner, he ſhould not give to the eldeſt a deduction equal to a twentieth part *of the eſtate* or the like, without a ſufficient cauſe, namely the virtues required. Conſequently, if there be a ſufficient cauſe, he may give a greater portion to one of his ſons, a deduction of a twentieth part and ſo forth to the firſt-born and the reſt, and no ſhare to an eunuch, an outcaſt, or the like. But if he do give a greater portion to one ſon, through partiality, becauſe he was born of a favourite wife, and give leſs or none to another ſon through reſentment, or give the

the portion of an eldeſt ſon to his firſt-born, though deſtitute of virtue, that diſtribution is invalid.

XXVIII.

NÁREDA :—A father has no power, if his intellect be diſturbed by ſickneſs, or his mind agitated by wrath, or his affection partially ſet on the ſon of a favourite wife, to make a partition different from the law *of inheritance.*

A father, acting in a mode not conformable with law, through deluſion ariſing from acute diſeaſe, in which air or other *conſtitutional element is depraved*, or through deluſion ariſing from wrath, or through the influence of exceſſive partiality on his mind, from love or the like, has no power to make an *irregular* partition. His want of power conſiſts in this: whatever diſtribution is *thus* made by him is void, becauſe it is made by one who is diſqualified; as the ceremonies ordained to be performed at twilight *are fruitleſs*, when performed by a man of the ſervile claſs, *becauſe he is diſqualified*. Accordingly VACHESPATI BHATTACHÁRYA obſerves, on the text of NÁREDA, that the phraſe "a father has no power" ſhows, that, if ſickneſs or the like be the cauſe, unequal partition, even though made by the father or other owner, and even though the wealth were acquired by himſelf, is invalid, like an act done without ownerſhip. "*A partition* different from the law," here ſignifies a partition in which more is given to one, and leſs to another, deviating from the law which propounds the portion of an eldeſt ſon and the reſt. The particle connects the act with the ſeveral circumſtances enumerated in the firſt hemiſtich, "if his intellect be diſturbed by ſickneſs, &c." However, ſince CÁTYÁYANA declares a reſerve, "without a ſufficient cauſe" (XXVII), unequal partition made by the father, and refuſal of partition, in reſpect of property acquired by himſelf, which are declared by VISHNU and many other Sages to depend on his pleaſure, are legal, according as there is or is not a ſufficient juſtifiable cauſe of partiality in the mind of one whoſe intellect is undiſturbed, as regularly happens among good men; (ſuch

(ſuch are duty and piety, a large family to maintain, inability *to earn a livelihood*, and ſo forth ;) or a ſufficient cauſe for excluding one ſon from a ſhare, ſuch as degradation and the like : the partition is valid, becauſe there is no impediment, ſuch as ſickneſs and the reſt mentioned by NÁREDA.

Since it is declared that the ruler *of the family* has no power *to make ſuch a partition*, the object *of that propoſition* is *to ſhow* the ſubject of the epithets or accidents, "making a partition different from the law," "if his mind be diſturbed by ſickneſs, &c." Here the deviation from the law is the cauſe which invalidates the partition. The accident or epithet, "whoſe intellect is diſturbed by ſickneſs," as well as the reſt, is both characteriſtick and cauſal. If he act contrary to the law through partiality, he is deprived of power: this is characteriſtick. Why ſhould he act contrary to law? Becauſe his intellect is diſturbed by ſickneſs: this conſequently is a cauſal deſcription. 'Deviating from the law, which propounds the portion of an eldeſt ſon*:' therefore, an allotment of a greater portion, ariſing from the deduction of a twentieth part or the like, does not conſtitute a partition different from the law *of inheritance*.

The text of YÁJNYAWALCYA (Book II, Chap. IV, v. 58) is explicit. Since the eighteen titles of adminiſtrative law are comprehended under the term "contract" *(vyavahâra)*, partition of heritage *by a perſon ſo circumſtanced* is alſo null; for MENU likewiſe applies the ſame term to inheritance, "theſe eighteen titles of law are ſettled as the ground-work of all judicial procedure *(vyavahâra)* in this world" (Book II, Chap. I, v. 2). In this place alſo, the term *(vyavahâra)* ſignifies title of juriſprudence, or *act cognizable in courts of juſtice*.

"Intoxicated†;" *inebriated* with wine or the like. "Inſane;" through the depravation of conſtitutional elements, as air or the like. "Grievouſly diſordered;" afflicted with ſevere illneſs. "Diſabled;" diſqualified, being addicted to gaming or the like. "Infant;" under the age of ſixteen years. "Agitated by fear;" impelled

* See the definition of illegal partition in the preceding paragraph.

† That a reference may be unneceſſary, I ſubjoin the text. A contract made by a perſon intoxicated, or inſane, or grievouſly diſordered, or diſabled, by an infant, or by a man agitated by fear or the like, or *in the name of another* by a perſon without authority, is utterly null. Book II, Chap. IV, v. 58. T.

impelled by dread of puniſhment and the like. "Without authority;" unauthorized by the owner. Gratuitous gifts and the like made by theſe are invalid. In ſix caſes mentioned, from inebriation to fear, the reaſon *of invalidating the contract* is the perturbation of mind. But, as RAGHUNANDANA obſerves, a man wholly dependent, a ſlave, a ſon and the reſt, are comprehended under the term "and the like:" and that obſervation is juſt.

VÁCHESPATI BHATTÁCHÁRYA.

Here the expreſſion "gaming or the like," comprehends luſt and other paſſions; for the word, which occurs in the text *(vyaſana)* is explained, 'danger or calamity, degradation, and vice proceeding from luſt or wrath.' Conſequently the ſenſe is this: as the worſhip of deities, performed during impurity, is productive of no merit, ſo does the volition of one inſane, wrathful, or the like, who intends to make a gift, produce no deveſture of former property; for, as a pure *worſhipper* is alone qualified for one act, ſo is a wrathleſs man or the like for the other. Conſequently, ſince the diſtribution made by him is null, partition muſt be made afreſh. However, ſhould he not give a deduction of a twentieth part and ſo forth to a virtuous eldeſt ſon and the reſt, the partition is not therefore invalid; for the allotment of a twentieth part and the like is founded *only* on piety and other merits, and equal partition is alſo propounded by the law: and if he do allot a ſuitable portion, including a deduction of a twentieth part and ſo forth, to his eldeſt ſon and the reſt, the partition is not different from the law *of inheritance;* for the law aſſents to a deduction of a twentieth part and the like. This brief ſtatement may ſuffice. The diſabilities, which are comprehended under "degradation, &c.;" will be explained in the chapter on Excluſion from Inheritance.

XXIX.

MENU:—If, among undivided brethren *living* with their father, there be a common exertion for common gain, the father ſhall never make an unequal diviſion among them, *when they divide their families.*

If

If ſons unanimouſly demand partition, the father ſhall not make an unequal partition on account of *filial* piety or the like: but he may give a deduction of a twentieth part and ſo forth to his eldeſt ſon and the reſt; for that is not conſidered as a ſhare.

JÍMÚTAVÁHANA.

RAGHUNANDANA and others concur in that expoſition. But CULLÚCABHATTA thus expounds the text: 'at the time of acquiſition, if there be a common exertion with the father for common gain, an unequal diviſion ſhall not be made.' CHANDÉSWARA has a ſimilar gloſs; and the *Vivâda Chintánteni*, in effect, concurs in this expoſition: for it is there ſaid, 'this concerns property acquired by brothers contributing equal labour *to the acquiſition*; there is conſequently no diſcrepance.' In effect, the gloſs intends property acquired by the equal exertion of brothers in common with their father. Should it be acquired independently of the father, it will be mentioned, that the ſons alone have power over it, ſince they are principals *in the acquiſition*.

Two objections have been noticed by SRÍ CRÍSHNA TERCÁLANCÁRA, author of a commentary on the work of JIMÚTAVÁHANA: 'ſince reaſon ſufficiently ſhows that unequal partition ought not to be made, the text is ſuperfluous;' and again, 'ſince MENU declares, "if a deduction be thus made, let equal "ſhares of the reſidue be aſcertained *and received*," the portion deducted being firſt ſet apart out of the undivided eſtate, it falls not within partition, *but precedes it*.' On this point it is ſaid, if a joint acquiſition be made by brethren, an unequal partition ſhould not be allowed: this, it muſt be affirmed, is admitted by TERCALANCÁRA; for he ſays, 'reaſon ſufficiently ſhows, &c.' But if all the brethren unanimouſly demand partition, ſhall or ſhall not unequal partition be made? This is the queſtion between CULLÚCABHATTA and JÍMÚTAVÁHANA and the reſt. The text relating to what reaſon ſufficiently ſhows, another revealed law muſt be eſtabliſhed as the foundation *of the preceding* in the caſe of partition unanimouſly demanded. Such is the objection according to JÍMÚTAVÁHANA and others. As the text is expounded by thee as repeating what reaſon ſufficiently ſhows, ſo may it not be alſo expounded by me as relating to what reaſon does ſufficiently ſhow: for a ſon, unable *to earn a livelihood*, demands

mands a partition undue in reſpect of himſelf, and injurious to his father; hence, ſince he commits an offence, a greater portion ſhall not be given to him? No; for the word 'with' would be unmeaning; and it is proper to affirm, that, if an exertion be made, both by a ſon unable to earn a livelihood, and by the reſt, an unequal diviſion ſhall not be made. It has been ſaid, 'ſince reaſon ſufficiently ſhows, &c.' Now, what proof is there that a father may not give the portion of an eldeſt ſon out of what he may acquire with the co-operation of his children, or a greater ſhare on account of inability *to earn a livelihood*; for no other text declares it, nor does the reaſon of the law ſhow it? But if it be affirmed, that this is propounded with a view to the caſe of ſons who have been unaided by their father, ſtill there is no queſtion; for ſons alone have the ownerſhip in the caſe of an acquiſition made independently of the father. The law, therefore, obviates the ſuppoſition, that, the father having full power over property acquired by the joint and equal exertion of ſons, his diſtribution of leſs *to one* and more *to another*, through his own ſtubborn will, is not inconſiſtent with common ſenſe. Let it not be objected, that to ſeek another revealed law as foundation *for the proceeding in the other caſe*, is equally elaborate. That it would be elaborate when this is unavoidable, is no *legitimate* objection; and thou wouldſt find it more tedious to eſtabliſh *a double* import of this text from the ambiguity of the terms, leſt diſparity ſhould thus occur: the brothers having equally contributed to the acquiſition, any one of them, who has a large family to maintain, ſhall take a greater ſhare; but, the brothers having made equal exertions to obtain partition, any one who has a large family to ſupport ſhall *only* receive an equal ſhare *with the reſt*.

As for what has been ſaid, that the deduction of a twentieth part falls not within partition, that does not appear accurate; for VRĬHASPATI (XXX) declares a diſtribution of ſhares with a deduction of a twentieth part to be one form of partition, and without it, the other form; and partition, conſiſting in the property being predicated of each ſon individually after diveſting the property of all the ſons collectively, and in the aſcertainment of *individual* property previouſly unaſcertained, does exiſt in this caſe. On the contrary, MENU propounding equal ſhares after having explained the deduction of a twentieth and the like, it appears

that the term "equal partition" ſignifies the allotment of ſhares without a deduction of a twentieth part. However, it appears, from the inſertion of the word "never," that an unequal diviſion originating in filial piety or the like ſhould not be made. Accordingly MISRA cites this text (XXIX) after explaining the deduction of a twentieth part. Again; the word "*utt'hâna*," ſignifying acquiſition, occurs in the inſtance of concerns among partners *(ſambhûya ſamutt'hâna)*, more literally, common exertion of partners. There is no objection to its alſo bearing the ſame ſenſe in this inſtance.

XXX.

VRÍHASPATI:—Two modes of partition among heirs are expreſsly mentioned; one with attention to priority of birth, and the other with equality of allotment.

As for what is ſaid, that, when ſons demand partition, an unequal diviſion ſhould not be made, even on account of *filial* piety or the like, becauſe, however dutiful he may have been, the ſon has in this inſtance committed an offence; the anſwer is, ſince ſuch an allotment depends ſolely on the choice of the father, it is already known that no ſuch allotment is made, if he do not chooſe it. Of what uſe then is this text? If the father, nevertheleſs, do give *ſuch greater ſhare*, the other ſons may oppoſe it; *for* it is declared by the law, that unequal partition ſhall not be granted when the brethren themſelves make the exertion; a text propounded for this purpoſe is pertinent, *and not ſuperfluous:* if this be alleged, *the anſwer is*, it is inconſiſtent with common ſenſe that the law ſhould attend to the claims of men guilty of equal offences.

A man has five ſons; one dutiful, one unable to earn his livelihood, another burdened with a large family to be maintained, a fourth otherwiſe circumſtanced. Theſe four, but not the fifth, demand a partition. In this caſe unequal diſtribution on account of piety, duty, or the like, may be made; for there is no common exertion of all the brethren. If many, not all, be the determinate

ſenſe

ſenſe *of the plural term*, can there be no unequal diviſion in the caſe of two ſons, ſhould they both demand partition; for, on this ſuppoſition, there is no common exertion of many, *that is, of three or more?* If the ſenſe of the inflection be indeterminate, then, even in the caſe of five ſons, any one contumacious ſon, demanding partition, might prevent the allotment of a greater ſhare to the dutiful ſon; which is inconſiſtent with common ſenſe.

Such is the opinion of ancient authors. But JÍMÚTAVÁHANA and the reſt aſſert, in as many words, that if the ſons unite in demanding partition, a greater portion cannot be given to one on account of piety and the like, but the portions of the eldeſt ſon and the reſt may be allotted to them, provided they be virtuous. On this queſtion the intelligent muſt decide. This brief ſtatement may ſuffice.

XXXI.

VRĬHASPATI :—Sons, to whom equal, leſs, or greater ſhares have been allotted by their father, ſhould maintain ſuch diſtribution; otherwiſe they ſhall be chaſtiſed.

According to CHANDÉSWARA and others, this text concerns wealth acquired by the father without co-operation of the ſons; and the text of MENU (XXIX) concerns property acquired with their co-operation: there is no contradiction. According to JÍMÚTAVÁHANA and others, the text of MENU ſhould be adduced in the caſe of partition demanded by the ſons, and the text of VRĬHASPATI in the caſe of partition made by the father of his own accord.

XXXII.

NÁREDA :—Whether the father diſtribute equal ſhares to his ſons, or give more wealth to ſome, and leſs to others, *according to circumſtances*, ſuch ſhall be their ſhares; for the father is lord of all.

This and the following text of YÁJNYAWALCYA have the ſame import with the text of VRĬHASPATI.

XXXIII.

YÁJNYAWALCYA :—The diſtribution made by the father is declared binding on ſons among whom an unequal diviſion has been made.

Again ; theſe texts imply, that if the father give a greater portion to one ſon on account of his filial piety or the like, another ſon may not oppoſe that diſpoſition. But ſhould he give his whole fortune, or nearly the whole, to one ſon, through partiality, and give nothing to another, or a trifle only, through reſentment, ſuch a diſtribution may be reſiſted. The text of VRĬHASPATI and others cannot deny the right of oppoſition ; for it is declared in the text above cited, that " the father has no power, *in ſuch circumſtances*, to make a partition different from the law *of inheritance*" (XXVIII). The acquiſition of property by co-operation of father and ſons ſhall be ſubſequently diſcuſſed.

A deduction of a twentieth part has been mentioned : of what nature is that deduction ?

XXXIV.

MENU :—The portion deducted for the eldeſt is a twentieth part *of the heritage*, with the beſt of all the chattels ; for the middlemoſt, half of that, *or a fortieth ;* for the youngeſt, a quarter of it, *or an eightieth.*

That which is deducted *(uddhriyatē)*, is a deduction *(uddhāra)* or portion deducted. " A twentieth part " is one part in twenty. The beſt of all the chattels *ſhall be alſo allotted to him ;* for the particle bears the collective ſenſe : both ſhould be given to the eldeſt, and ſhould be firſt ſet apart for him. Next, " half of that," or half of a twentieth part, that is, one part in forty, muſt

be

be ſet apart for the middlemoſt; and "a quarter of it," or a quarter of a twentieth part, that is, one part in eighty, for the youngeſt. Dividing the reſidue into equal ſhares, as directed by MENU (XXXIX 1), let one ſhare, together with the twentieth part *already deducted*, be given to the eldeſt; another, with the fortieth part, to the middlemoſt; another again, with the eightieth part, to the youngeſt.

This is the firſt of two modes of partition mentioned by VRĬHASPATI (XXX). The fortieth part ſhould be computed on the whole eſtate, not on the reſidue after deducting a twentieth part; for that is expreſsly declared by the term "half of that." The ſame *ſhould be* alſo *affirmed* in reſpect of an eigthieth part. Conſequently, where three ſons *inherit*, and the eſtate amounts to one hundred *ſuvernas*, five muſt be firſt ſet apart for the eldeſt; half of that, or two *ſuvernas* and a half, for the middlemoſt; and one and a quarter for the youngeſt: eight *ſuvernas* and three quarters being thus appropriated, the reſidue, amounting to ninety-one *ſuvernas* and a quarter, ſhould be equally divided. Such is the whole ſenſe.

Since "equal ſhares" (XXXIX 1) ſuppoſe partition made by ſons, after the demiſe of their father; and the deduction of a twentieth part and ſo forth is thus propounded (XXXIV); after premiſing partition ſubſequent to the death of the father (XVIII); is not that deduction unconnected with a diſtribution made by the father himſelf? No; for MENU has ſuppoſed the deduction of a twentieth part and ſo forth in the caſe of partition made by the father; elſe he would not have ordained an equal diſtribution in the caſe of a common exertion among brethren (XXIX), for equal partition would be a matter of courſe. Therefore, unequal diviſion takes place even in the caſe of partition made by the father: and the deduction of a twentieth part and ſo forth conſtitutes that unequal diviſion, as above mentioned; for he has declared no other mode.

XXXV.

MENU:—If brethren once divided, and living again together as parceners, make a ſecond partition,

the ſhares muſt in that caſe be equal, and the firſt-born ſhall have no right of deduction.

Attention to priority of birth is thus forbidden in the caſe of a ſecond partition made among brothers who were re-united. By the texts which immediately follow (Chap. 9, v. 211 and 212), if any one of the brothers die, his uterine brothers and ſiſters ſhall divide his ſhare. In the text (v. 213), the greater ſhare in right of primogeniture, compriſing the twentieth part and ſo forth, is denied to an eldeſt ſon who is not virtuous. By the following text (v. 214), all thoſe brothers, whether firſt-born or younger, who are addicted to any vice, loſe their title to the inheritance. Virtue, as well as primogeniture, is declared requiſite. The ſubſequent text (v. 215 and XXIX) cannot relate to unequal partition of another kind; for the right of primogeniture is the ſubject conſidered. But the word "never" bears an alluſion to the greater allotment on account of filial piety or the like, as mentioned by other Sages: it does not intend that alone; for it is wrong to aſſume an argument from an alluſion to what has been propounded by others, wholly neglecting what had been ſaid by *the author* himſelf.

It is aſked, if a man have five ſons, what ſhall be the ſhares of the others beſides the eldeſt, middle, and youngeſt; for MENU has not propounded their additional portions? The anſwer is, there are no others; for the eldeſt is the firſt-born of all the ſons, the youngeſt the laſt-born, and all the intermediate ſons are middle. MENU himſelf makes this evident.

XXXVI.

MENU:—The eldeſt and youngeſt reſpectively take their juſt mentioned portions; and if there be more than one between them, each of the intermediate ſons has the mean portion, *or the fortieth.*

"Juſt mentioned;" declared in the preceding texts. "The mean portion;" a fortieth part: and that ſhall be given to each of them; not a ſingle fortieth part diſtributed among all the interme-

diate ſons, for that would be an unjuſt diſparity. Conſequently one part in twenty, and the beſt chattel, ſhall be given to the eldeſt, and the ſeveral portions ordained ſhall be allotted to the reſt. Such is MENU's intention, as expounded by CHANDÉSWARA: and that muſt be underſtood, *both* in the caſe of partition made by a father, and in that of partition made by brothers.

XXXVII.

MENU:—Of all the goods collected, let the firſt-born, *if he be tranſcendently learned and virtuous*, take the beſt article, whatever is moſt excellent in its kind, and the beſt of ten *cows or the like*.

Here alſo, as had been already mentioned, he ſhall take the beſt of all the chattels. In the preceding text (XXXIV), one part in twenty was ordained; but in this text, one in ten, that is, the beſt of ten chattels. Such is the difference. Texts of GÓTAMA, BAUDHÁYANA, DÉVALA, and others to the ſame purport, will be cited.

XXXVIII.

MENU:—But, among brothers equally ſkilled in performing their ſeveral duties, there is no deduction of the beſt in ten, *or the moſt excellent chattel*; though ſome trifle, as a mark of greater veneration, ſhould be given to the firſt-born.

What had been ſaid, "of all the goods collected, let the firſt-born take whatſoever is moſt excellent in its kind," is not applicable to the preſent caſe: a trifle only, as ſuggeſted by the phraſe "let the firſt-born take the beſt article," ſhall be given to him as a mark of greater veneration, or as evidence of increaſing reſpect. In what caſe ſhall this be done? The legiſlator explains it; "among brothers equally ſkilled in performing their ſeveral duties:" if all the brothers be equally aſſiduous in the ſtudy of

ſcripture, in the uſe of arms, in commerce, in ſervice, or the like, one part in ten ſhall not be given to the eldeſt: and ſince that is merely illuſtrative, one part in twenty alſo ſhall not be given; but one excellent chattel only ſhall be given.

XXXIX.

MENU:—If a deduction be thus made, let equal ſhares of the reſidue be aſcertained *and received;* but if there be no deduction, the ſhares muſt be diſtributed in this manner:

2. Let the eldeſt have a double ſhare, and the next born a ſhare and a half, *if theſe two clearly ſurpaſs the reſt in virtue and learning;* the younger ſons muſt have each a ſhare: *if all be equal in good qualities, they muſt all ſhare alike.* Thus is the law ſettled.

The firſt hemiſtich has been *already* expounded. The lawgiver propounds the ſhare of an eldeſt ſon in another form; "but if there be no deduction, &c." If that be not done which has been thus directed, "of all the collected wealth, let one part in twenty be firſt allotted to the eldeſt ſon, and ſo forth;" *in other words*, if that *portion* be not ſet apart, then this diſtribution, which will be mentioned, muſt be made of all the collected wealth. The Sage propouuds it *in the ſecond verſe*. Of all the goods collected let the eldeſt take two ſhares; the next born, or ſecond brother, a ſhare and a half; and the reſt, a ſhare a piece. Add one to the number of ſons; to this doubled, again add one, and divide the amount of the heritage by this diviſor; the quotient is a ſhare: give four ſuch ſhares to the eldeſt brother, three to the ſecond brother, and two to each of the others. For example; let the ſum be ſeventy-eight *ſuvernas*, to be divided among five brothers: ſeventy-eight *ſuvernas* being divided into thirteen parts, each ſhare amounts to ſix *ſuvernas;* and the portions are aſcertained at twenty-four *ſuvernas* for the eldeſt, eighteen for the ſecond, and twelve for each of the others.

Thus

Thus MENU delivers four modes of unequal partition; and ſince partition cannot be made four ways in the ſame caſe, it muſt be affirmed that he intends a diſtinction according to circumſtances. Such is the opinion of CULLÚCABHATTA, CHANDÉSWARA and others. VÁCHESPATI BHATTÁCHÁRYA gives a ſimilar expoſition; but adds—'In the caſe of partition by a father, 'the deduction of a twentieth part and ſo forth ſhall not be given 'to the eldeſt ſon to increaſe his portion; for that belongs to the 'ſubject of partition among brothers. The portion of an eldeſt 'ſon and ſo forth, which is ordained in the ſeveral texts wherein 'partition made by a father is propounded, ſhould alone be allowed in the caſe of a partition made by him.' Thoſe texts follow.

XL.

BAUDHÁYANA, citing the ſcripture:—"*Let* equal *ſhares be given* to all without diſtinction, or let the eldeſt deduct the moſt excellent chattel:" or let the firſt-born take one of ten *cows and the like*, and let the reſt ſhare equally.

He directs the beſt chattel to be given to the eldeſt, and one out of ten cows, or other decade of homogeneous things.

XLI.

DÉVALA:—The mean portion, *or fortieth part*, is ordained for ſons who have equal pretenſions; *but* let the tenth part of the heritage be given to the eldeſt, who conducts himſelf ſtrictly according to law.

The Sage directs, that the tenth part *of the heritage* ſhall be allotted to the eldeſt; and the mean portion ordained by MENU, or one part in forty, to the others.

XLII.

XLII.

APASTAMBA:—Having ſatisfied the eldeſt with one chattel, let the father, who makes a partition in his life-time, aſſign equal ſhares to his ſons, but exclude one who is emaſculated, inſane, or degraded.

'He ordains, that one chattel only ſhall be given to the eldeſt; 'but equal ſhares to the other ſons. From the mutual diſagree- 'ment of theſe texts, the rule of deciſion muſt be argued accord- 'ing to their different imports. If the eldeſt be tranſcendently 'virtuous, and the reſt be not virtuous, *the partition ſhall be made* 'in the ſecond mode propounded by BAUDHÁYANA (XL); that 'is, one part in ten *ſhall be allotted* to the firſt-born: if the eldeſt 'have ſome virtue, and the others none, a tenth part muſt be 'given to the firſt-born in addition *to his ſhare of the reſidue*, and 'a fortieth to the others, as ordained by DÉVALA (XLI): if all 'be deficient in virtue, one chattel, as directed by APASTAMBA '(XLII), ſhall be given to the eldeſt in addition *to his ſhare*; and 'that chattel ſhall be the beſt article; for this coincides with the 'firſt mode propounded by BAUDHÁYANA.'

The text of DÉVALA may alſo be applicable to the caſe where the eldeſt ſon is tranſcendently virtuous, and the reſt have ſome good qualities; for, the ſame commentator has ſo ſaid in treating of another caſe where four ſhares are allotted *to the eldeſt ſon*. CHANDÉSWARA appears to have entertained the ſame notion; for he inſerts theſe texts under the title of Partition made by a father, but places the texts of MENU and the reſt under the title of Partition among brothers after the death of their father: however, he has further inſerted the following text under the ſame title:

XLIII.

SANC'HA and LIC'HITA:—To the eldeſt ſon a bull ſhall be given; to the youngeſt, a houſe other than the father's habitation.

And

And this is enjoined even without the father's acquieſcence, if the eldeſt and youngeſt ſons be virtuous; elſe the precept would be nugatory. This is alſo admitted by HELÁYUDHA. May not this text concern partition among brothers after the death of their father, ſince the phraſe "other than the father's habitation" ſuggeſts the father's deceaſe? No; for it occurs under the ſame title with the following text, in which partition by a father is evidently intended:

XLIV.

SANC'HA and LIC'HITA:—If there be one ſon, let *the father* himſelf reſerve two ſhares, and the beſt of the ſlaves and cattle.

The meaning of the text is this: having taken, as an additional portion, one of the bipeds and quadrupeds, a male or female ſlave, and a cow or the like, let the father reſerve for himſelf two ſhares; and in the former text, "other than the father's habitation," ſignifies, excepting the houſe inhabited by the father. The word *(avaſt'hána)*, from its etymology, bears the ſenſe of locality. It ſhould be here remarked, that the additional portion thus ordained is intended as a token of greater veneration towards the father, like the portion of an eldeſt ſon; and it muſt be allotted to him, even though he be deficient in virtue. If he be virtuous, then more muſt be allotted in proportion to his good qualities. What more? In anſwer to this queſtion, the portions mentioned in texts relative to the ſhare of an eldeſt ſon are adduced. In this inſtance the equality of the father and eldeſt brother ſhould be acknowledged. But that has not been mentioned by VÁCHESPATI BHATTACHÁRYA: he conſiders both texts of SANC'HA and LIC'HITA as relating to partition among brothers; for one *(éca)* is explained, 'chief, other, alone.' (AMERA's Dictionary.) "One ſon;" the chief ſon; that is, the eldeſt ſon: he may reſerve two ſhares for himſelf, as directed in the following text:

XLV.

VRIHASPATI:—The eldeſt, *or he who is pre-eminent* by birth, ſcience, and virtuous qualities, ſhall receive two ſhares of the heritage; the reſt ſhall ſhare alike: but he is *venerable*, like their father.

There is this difference only; the firſt text (XLIII) imports, that he ſhall further receive ſome trifle, ſuch as a chattel. In the *Párijáta* alſo, "one ſon" is explained eldeſt ſon; and the ſenſe of the ſecond text (XLIV) is thus obvious. But the author of the *Bháſhya* reads *yady écah ſyát*, if he be ſingle, inſtead of *yady éca putrah ſyát*; and expounds that reading, 'if he be ſingle, or have loſt his wife, he may reſerve two ſhares; but if his wife be living, he muſt ſatisfy her with another ſhare: and he may take one of the bipeds and quadrupeds in addition to the two ſhares reſerved.' Its conſiſtence with the text of YÁJNYAWALCYA, "or divide the eſtate among them in equal ſhares" (XXVI), muſt be eſtabliſhed by HELÁYUDHA, by the author of the *Bháſhya*, and by CHANDÉSWARA, explaining that text as relating to the caſe where all are deficient in virtue: the apparent contradiction is reconciled by VACHESPATI BHATTÁCHÁRYA, referring one text to the caſe of an eldeſt ſon very deficient in virtue: on this ſubject nothing is directly ſtated in the *Viváda Chintámeni*, *Dáyatatwa*, works of JÍMÚTAVÁHANA, and other books. But the uncertainty as to what adjuſtment ſhould be made if both the eldeſt and ſecond ſon be virtuous, is a reproach to the gloſs of CHANDÉSWARA and the reſt, and to that of VÁCHESPATI BHATTÁCHARYA. Again; the text of DÉVALA, "the mean portion, &c." (XLI), is alſo explained by VÁCHESPATI BHATTÁCHÁRYA, from parity of reaſoning, as implying partition among brothers. *But*, were it ſo, why ſhould not *all* texts which relate to partition among brothers be alſo adduced in the caſe of partition by a father, ſince a queſtion can be thereby ſatisfied? This ſhould be diſcuſſed.

Texts which propound the portion of an eldeſt brother in the caſe of partition among brothers, are here cited incidentally.

The

The text of MENU (XXXIV) and others have been *thus* quoted and explained. As for this text of MENU (XXXIV), *its ſenſe is*, 'If there be many ſons by one mother, and all virtuous, but 'the relative degree of virtue decline in the order of birth, then a 'twentieth part of the collected wealth ſhall be deducted for the 'eldeſt ſon, and the beſt of all the chattels ſhall be given to him; 'half of that, or the fortieth part, with the mean chattel, ſhall 'be given to the middlemoſt; and a quarter of it, or the eightieth 'part, with the worſt chattel, ſhall be given to the youngeſt.' Thus CHANDÉSWARA comments on the text. Here, it ſhould ſeem, the mean chattel for the middlemoſt, and the worſt chattel for the youngeſt, though not directed by the text, are aſſerted from their parity with the form of the portion allotted to the eldeſt. Some lawyers contend, that this ſhould not be admitted on the *ſimple* affirmation of CHANDÉSWARA: the relative degree of virtue declining in the order of birth can only be well applied to the caſe of three brothers; elſe, ſince no fourth or fifth ſhare has been propounded, and ſince the precedent reaſoning, which ſhows the ſame additional portion for all the intermediate brothers, would be irrelevant, the text could not be fitly applied. In fact, "youngeſt" (XXXIV) may ſignify the third brother; the fourth brother, the fifth, and the reſt, even though virtuous, have no additional portion, ſince none has been ordained by the Sage: this we hold reaſonable. It diſagrees, however, with the gloſs of CHANDÉSWARA on a text which will be cited. To this ſome object, that the ſuppoſed caſe of relative degrees of virtue declining in the order of birth is nugatory; even among brothers equally virtuous, a greater portion muſt be given to the firſt-born, for he is pre-eminent: in the uncertainty what ſhould be given, the double ſhare mentioned by MENU ſhould be allotted to him as the greateſt portion in compariſon with the reſt; to the youngeſt ſhould be allotted the ſmalleſt of all the portions ſpecified by MENU. That cannot be; for MENU himſelf (XXXVIII) denies a deduction among brothers equally endowed with good qualities; and the text is ſo expounded by CULLÚCABHATTA. Conſequently that ſhould not be admitted. It is proper to allow ſome chattel in right of primogeniture: and ſomething ſhould be given in right of pre-eminence in virtue, proportionate to the degree of it; that ſome-

thing

thing ſhould be the beſt of all the chattels, for this coincides with the text of BAUDHÁYANA (XL). We cannot therefore determine, why a mean chattel for the middlemoſt, and the worſt chattel for the youngeſt, unnoticed by CULLÚCABHATTA, are aſſerted by CHANDÉSWARA. It ſhould not be argued, from the following text, becauſe "ſucceſſively" ſignifies in order, that the eldeſt ſhall have the beſt *chattel;* the middlemoſt the mean *chattel;* the youngeſt the worſt. That term relates *only* to the allotment of dwelling-houſes.

XLVI.

HÁRÍTA :—When a herd of kine is to be divided, let the reſt of the brethren give a bull, *in lieu of* the beſt chattel, to the eldeſt brother, or give him the beſt *portion;* leaving *to him* the *images of* deities and the *patrimonial* houſe, let them remove and erect other habitations: *or if they remain* in the ſame *court*, the beſt apartment ſhall be aſſigned to the eldeſt, and ſucceſſively *the next beſt* to the others.

The ſenſe of the text is this: let a bull, *in lieu of* one chattel, that is, in lieu of the beſt chattel, be given to the eldeſt; this ſhall be given over and above his ſhare. The lawgiver ſubjoins an alternative; or the beſt and moſt excellent *portion:* the text muſt be ſo ſupplied. "Deities;" images of VISHNU and the reſt. "The houſe;" that which was built by their father; the ancient abode *of the family*, and ſo forth: this ſuppoſes one only houſe. Shall the reſt remain without a habitation? Therefore does the Sage add, let them remove, and erect habitations beyond the limits of the court or yard: but if they cannot remove and erect other houſes, then, ſays the legiſlator, the beſt quarter ſhall be aſſigned to the eldeſt. CHANDÉSWARA ſo expounds the text. "If they remain in the ſame court," or in the houſe built by their father, *ſuch an arrangement ſhall be made.* In the *Retnácara* the term uſed in the text *(daeſhina)* is explained beſt: that

ſhall

ſhall belong to the eldeſt; and ſucceſſively the mean apartment to the middlemoſt; and the worſt to the youngeſt. Some explain the term, *literally*, the ſouth quarter; for that is beſt: ſucceſſively, eaſt, north, and ſo forth, *ſhall quarters be aſſigned to the reſt.*

The text of MENU (XXXVI) is thus expounded in the *Ratnâcara:* 'If the eldeſt and youngeſt be virtuous, and ſeveral intermediate ſons be deficient in virtue, the eldeſt and youngeſt reſpectively take the twentieth and the eightieth parts, and all the intermediate ſons take a ſingle fortieth.' But, if the intermediate ſons be virtuous, each of them ſhall receive a fortieth part. Should the eldeſt alone be virtuous, he ſhall take the beſt article out of all the goods collected (XXXVII). If the eldeſt ſurpaſs the reſt in virtue, and they have good qualities in a moderate degree, though ſomewhat inferior to the youngeſt, then GOTAMA propounds *the rule of diſtribution.*

XLVII.

GÓTAMA:—A twentieth part of the heritage, a pair *of kine*, a car with the beaſts which have teeth in both jaws, *(namely horſes, aſſes, and the reſt,)* and the bull kept for impregnation, ſhall belong to the eldeſt; cattle blind of one eye, or old, and thoſe of which the horns are broken, and the tail hairleſs, ſhall belong to the middlemoſt, if there be two or more *head of ſuch cattle;* a ewe, *ſome* grain, *a little* iron, a houſe, a cart and yoke, and one of every ſort of quadruped, ſhall belong to the youngeſt; the reſidue ſhall be equally divided.

"A twentieth part;" the twentieth part deducted as abovementioned: a pair of kine: "beaſts which have teeth in both jaws;" as horſes, aſſes and the like: "a bull;" one capable of impregnating the cows: this deduction ſhall, if poſſible, be made for the eldeſt. "Old;" aged: "the horns of which are broken;" which have broken horns: "and the tail hairleſs;" of which the tail-

tail-bone is deſtitute of hair: this deduction ſhall be made for the middlemoſt, provided there be two or more *head of ſuch cattle*. An ewe, ſome grain, a little iron, one houſe, a cart, *a pair of* oxen, and one of every kind of quadruped, cows and the reſt, ſhall be deducted for the youngeſt. The reſidue ſhall be equally divided. Such is the expoſition conformable with the gloſs of CHANDÉSWARA. But, if there be no cows blind of one eye and the like, what ſhall be done? The anſwer is, ſome trifle muſt be given as an equivalent. It ſhould not be argued, that, like a promiſed ſacrifice, if effects be wanting, nothing ſhall be given. When the thing is aſcertained, and the queſtion be relative to the act, in this form, "what ſhall be done with this thing;" then alone, on failure of the thing, the act is annulled: but, when the gift is aſcertained, and the queſtion be, "to whom ſhall it be given?" which is anſwered by the command, "give it to ſuch a one;" then, on failure of the thing, it is reaſonable that an equivalent ſhould be given. Thus do ſome lawyers expound the law.

XLVIII.

ĀPASTAMBA:—In certain countries a *ſuverna*, a black cow, and the black produce of the earth, devolve on the eldeſt ſon, together with the utenſils of the common father.

"Black produce of the earth," as *tila*, peaſe and the like. "Utenſils;" veſſels for eating and ſo forth.

XLIX.

BAUDHÁYANA:—On the death of the father, the portion of an eldeſt ſon is, in the order of the four claſſes, a bull, a horſe, a goat, and a ſheep.

"In order;" that is, a bull *ſhall be the portion* of a *Bráhmana*; a horſe, of a *Cſhatriya*; a goat, of a *Vaiſya*; a ſheep, of a *Súdra*. According to SRÍ CRÍSHNA TERCÁLANCÁRA, *Súdra* here ſignifies

nifies the ſon of a man of the ſervile claſs by a woman of the ſame tribe; there is no inconſiſtency. But, according to RAGHUNANDANA and others, *the term here ſignifies* one born of a woman of the ſervile claſs by any father, whether of the ſacerdotal or other tribe.

L.

VASISHT'HA :—Partition of heritage among brothers ſhall be thus made: the eldeſt ſhall take a double ſhare, and the tithe of cows and horſes; the youngeſt ſhall have the goats and ſheep, and one houſe; *the ſword and other* black iron, and the furniture of the houſe, ſhall belong to the middlemoſt.

Since the particle connects the tithe of cows and horſes with what had preceded, this alſo ſhall accrue to the eldeſt. How many goats and ſheep ſhall belong to the youngeſt? As many as poſſible. The middlemoſt ſhall have the ſword, which is made of iron, the peſtle and mortar, and the reſt of the furniture.

From the mutual contradiction of theſe texts, the partition is regulated by authors determining the degrees of virtue. That ſhall be now recapitulated.—1ſt, VÁCHESPATI BHATTÁCHÁRYA conſiders the text of MENU (XXXIV) as applicable to the caſe where many ſons inherit the eſtate, and the degrees of virtue they poſſeſs decline in the order of birth. CHANDÉSWARA concurs in that expoſition, and remarks, that "the youngeſt" ſignifies one born after all the reſt, and that all the intermediate ſons ſhall have a fortieth part. We underſtand by the word "youngeſt," in this place, the third ſon: the deductions for the fourth ſon and the reſt ſhall be ſucceſſively half of that which preceded. Some alſo admit this *deduction* in the caſe of partition by a father: but that is not approved by VÁCHESPATI BHATTÁCHÁRYA, nor by CHANDÉSWARA; and nothing is expreſsly ſaid on this point in the works of JÍMÚTAVÁHANA and the reſt.—2dly, According to the gloſs of CHANDÉSWARA on the text of MENU (XXXVI), if both the eldeſt and youngeſt be virtuous, and the intermediate brothers be deficient in virtue, the eldeſt and youngeſt reſpectively ſhare, as deductions, the twentieth part and

the quarter of it, and all the intermediate brothers ſhare a ſingle deduction of a fortieth part: but, if the intermediate ſons be virtuous, each of them ſhall deduct a fortieth part. VÁCHESPATI BHATTÁCHÁRYA holds, that, if all be equally virtuous and learned, the eldeſt and youngeſt reſpectively ſhare the twentieth part and the quarter of that deduction, and each of the intermediate brothers has a fortieth part. We affirm, that, the intermediate brothers being leſs virtuous than the eldeſt, and either leſs or more virtuous than the youngeſt, the rule muſt be ſettled in *one or the other of* the two modes propoſed by CHANDÉSWARA.—3dly, When the eldeſt is tranſcendently virtuous, and the reſt deficient in virtue, the rule is aſſumed in the *Retnácara* from the text of MENU (XXXVII). VÁCHESPATI BHATTÁCHÁRYA concurs therein; but expounds the text, 'of all the goods collected let the firſt-born take the beſt article in each ſort.'—4thly, CULLÚCABHATTA appears to conſider the text of MENU (XXXVIII), as regulating the caſe where all are equally virtuous. The text of HÁRÍTA (XLVI) intends the ſame caſe. But JÍMÚTAVÁHANA ſays, 'there ſhall be no deduction of the beſt in ten cows or the like.—5thly, When the eldeſt, and he who was born next after him, poſſeſs the good qualities deſcribed, and the others are deficient in virtue, the rule is deduced by VÁCHESPATI BHATTÁCHÁRYA from the text of MENU (XXXIX 2). But ſome hold this rule applicable when the eldeſt is tranſcendently virtuous, and any one younger ſon is leſs virtuous in the ſubduple proportion.—6thly, According to ſome lawyers, theſe texts of MENU are alſo applicable to partition by a father. From the text of GÓTAMA (XLVII), CHANDÉSWARA deduces the rule, when the eldeſt ſurpaſſes the reſt in virtue, but they poſſeſs good qualities in a moderate degree. Some conſider this rule as applicable when the eldeſt poſſeſſes the ſcience and practice ſuitable to his own claſs.—7thly, The rule of APASTAMBA (XLVIII) ſhould be adduced when the eldeſt poſſeſſes virtue in an inconſiderable degree.—8thly, In the *Retnácara*, the text of BAUDHAYANA (XLIX) is applied to partition in the ſame circumſtances. But ſome conſider it as intending the ſame caſe with the text of MENU (XXXVIII).—9thly, From the text of VASISHT'HA (L), VÁCHESPATI BHATTÁCHÁRYA deduces the rule when the eldeſt has a double degree of virtue,

virtue, and the reſt one degree each. CHANDÉSWARA *aſſumes it*, when the eldeſt is tranſcendently virtuous, and the reſt *ſimply* virtuous; but he has inſerted this text, after premiſing partition among brothers by two or more mothers. Modern lawyers deduce from this text a rule for the caſe when the eldeſt ſon is endowed with an aſſemblage of good qualities, ſcience, conduct, care *of his brethren* and ſo forth.—10thly, From the text of DÉVALA (XLI) HELÁYUDHA and the *Párijátá* deduce the rule when the eldeſt is verſed in ſcripture, and the reſt are deficient in virtue: they explain "the mean portion," the deduction of a twentieth. Others, ſays CHANDÉSWARA, *adduce this text*, when the eldeſt is ſkilled in *ſacrifice with* fire, and in *the ſtudy of* the *Védas*; but the reſt are ſimply virtuous: the mean portion ſignifies the deduction of a twentieth. VÁCHESPATI BHATTÁCHÁRYA concurs therein; but explains "mean portion," the deduction of a fortieth.—11thly, CHANDÉSWARA, from the texts of VRÍHASPATI (XLV) and GOTAMA (LI), deduces the rule when the eldeſt is tranſcendently virtuous, and the reſt are deficient in virtue. But VÁCHESPATI BHATTÁCHÁRYA expounds it, 'if the reſt have good qualities in a ſmall degree:' he thinks, that the eldeſt could not *be ſaid to* ſurpaſs the reſt in ſcience, unleſs they poſſeſs learning in a ſmall degree. It muſt be alſo affirmed, ſay ſome lawyers, that he ſupports *his brethren* like a father; for he takes a *ſuperior* ſhare like a parent, and the text deſcribes him as equally venerable with their father. It ſhould be here conſidered, that one excellent chattel muſt be given to the father's firſt ſon; ſhould he be verſed in the ſcience ſuitable to his claſs, a deduction ſhould be allowed in proportion to his knowledge: if he ſupport them, like a father, from their early infancy, he may take an unequal ſhare; and if his conduct be ſtrictly proper, another chattel ſhould be aſſigned to him. This may be argued from common ſenſe, or from the reaſon of the law. Since it is not *otherwiſe* expreſſed, all beſides the eldeſt and youngeſt are middlemoſt, that is, *intermediate*. VÁCHESPATI BHATTÁCHARYA conſiders the equality of allotment mentioned in the text of VRÍHASPATI (XXX) as applicable to the caſe where the eldeſt is deficient in virtue, but the reſt are equal to each other in good qualities. The ſame muſt be alſo underſtood in reſpect of property acquired by the common exertion of ſeveral brothers, even

though deficient in good qualities. The text of MENU (LII) forbids the deduction of a twentieth part in favour of an eldeſt brother, who defrauds his juniors; for CULLÚCABHATTA expounds "deprived of his own ſhare," deprived of the ſhare to which he would have been entitled on account of primogeniture.

LI.

GÓTAMA:—Or the firſt-born ſhall have two ſhares, and each of the reſt one.

LII.

MENU:—Any eldeſt brother, who from avarice ſhall defraud his younger brother, ſhall forfeit *the honours of* his primogeniture, be deprived of his own ſhare, and pay a fine to the king.

On this ſubject modern lawyers ſay, if the brethren be void of offence, the portions of younger brothers decreaſe with the order of birth in a ſubduple proportion to the deduction of a twentieth part. That the deduction of a twentieth part ſhall belong to the firſt-born of all the ſons, is natural: if he be endowed with ſcience and virtue, twice as much, or a tenth part, ſhall be allotted to him. In like manner, if the intermediate ſons be alſo endowed with ſcience and virtue, they ſhall have the double of their own *regular* portions. But if the eldeſt ſupport and educate his brothers, like a father, one additional ſhare ſhall be aſſigned to him as to a parent: in like manner, if the middlemoſt or youngeſt do ſo, half a ſhare, or a quarter, or the like, *ſhall* be allotted to them: "next born," in the text of MENU (XXXIX 2), is merely an inſtance. The allotment of a pair of oxen and ſo forth (XLVII) *is regulated* by the various degrees of virtue and good conduct. If younger brothers ſurpaſs their elders in virtue, there is no deduction of the beſt in ten (XXXVIII); but ſome trifle ſhould be given to the firſt-born. Should he offend, by defrauding his *younger* brother, an equal ſhare only ſhall be allotted to him;

him; even though he have both good and bad qualities, nothing ſhall be given *as a mark of veneration:* like the fine to the king, this alſo is another penalty impoſed on him.

If the deduction of a twentieth part and ſo forth in favour of the firſt-born and the reſt do not occur in theſe days, the uncenſured practice of good men, or the contumacy of younger brothers, is the ground *on which it is diſuſed*, not the want of elder brothers entitled to that deduction; for even now are found elder brothers verſed in ſcience, ſkilled in arms, and ſo forth.

Is the deduction of a twentieth part *ordained for partition* among brothers in general, *whether by the ſame or* by different mothers, or among uterine brothers only? To this VÁCHESPATI BHATTÁCHÁRYA replies, 'the double ſhare mentioned by VRĬHASPATI (XLV) concerns uterine brothers only; for, having delivered in this text a precept couched in general terms, the Sage ſpecifies a diſtinction in the following text, which ordains the delivery of the deducted allotment, and relates to that alone.'

LIII.

VRĬHASPATI and MENU*:—All the ſons of twice-born men, produced by wives of the ſame claſs, muſt divide the heritage equally, after the younger brothers have given the firſt-born his deducted allotment.

'The text of BAUDHAYANA, "let the firſt-born take one of ten cows, &c." (XL), thoſe of MENU (XXXVII and XXXIV), and the text, which ordains equal ſhares, may alſo concern *half* brothers by different mothers.' His meaning is this: from the terms of the text of VRĬHASPATI (LIII), and the rule of VISHNU (LIV), it *appears* that a deduction ſhould only be given to the firſt-born, not to the middlemoſt alſo. That deduction is of three kinds: the beſt, as propounded by MENU (XXXVII); the mean portion, as ordained by BAUDHAYANA (XL); the worſt, as ſpecified by MENU (XXXIV). By affirming three modes of deducting the portion *of the firſt-born*, three queſtions

 are

* MENU, Chap. IX. v. 156; but here cited as a text of VRĬHASPATI.

are ſatisfied; and texts which propound other forms of deduction, are not admitted *in this caſe:* no deducted allotment is given to the reſt; their good qualities need not be examined.

LIV.

VISHNU:—Let ſons produced by wives of equal claſs receive equal ſhares, but give the beſt chattel with a deducted allotment to the firſt-born.

But modern lawyers hold, that the ſeveral texts ſhould be adduced, if a brother be endowed with ſuch and ſuch good qualities. JÍMÚTAVÁHANA alſo conſiders the text of VRÍHASPATI (XLV) as applicable to uterine brothers only. But CHANDÉSWARA, after premiſing 'partition among brothers by ſeveral mothers,' inſerts the text of MENU (XXXIX 2), and the rule of GÓTAMA (LI), and attributes to them a ſimilar import with the text which propounds the deduction of a twentieth part. MENU, having propounded four or five caſes of deducted allotments, and not expreſsly noticing the general ſubject of partition among ſons born of different mothers, proceeds to the ſucceſſion of an elder ſon born of a wife laſt married. For this reaſon CHANDÉSWARA has ſuppoſed no difference in reſpect of the double ſhare and the like, between ſons born of different mothers, or born of the ſame mother. VÁCHESPATI MISRA concurs in that opinion. The text cited (LIII) is a mere repetition: after declaring unequal partition among ſons produced by wives of different claſſes, to obviate the ſame *ſuppoſition* in the caſe of wives equal in claſs; it does not diſtinguiſh between the ſhare increaſed by a twentieth, and the equal ſhare; for both depend ſolely on the qualities of the brothers. Conſequently, under the term "deducted allotment" an equal ſhare is comprehended, as well as the ſhare augmented by a twentieth part of the heritage; it is not proper to deduce any conſequence ſolely from the literal ſenſe of the term "deducted allotment:" elſe, the deduction of a twentieth part might be aſſigned to an eldeſt brother of the half-blood, who may be deſerving of that allotment; but the portion of an elder brother could not be given to one who ſhould merit a double

ble ſhare: were it ſo, the diſparity would be great and unjuſt. Such is their meaning.

LV.

MENU :—A younger ſon being born of a firſt-married wife, after an elder ſon had been born of a wife laſt married, it may be a doubt in that caſe how the diviſion ſhall be made:

2. Let the ſon born of the elder wife take one moſt excellent bull deducted from the inheritance; the next excellent bulls are for thoſe who *were born firſt, but* are inferior on account of their mothers, *who were married laſt.*

This doubt ariſes in the caſe of two or more ſons produced by wives equal in claſs; for, partition of heritage among ſons of various claſſes will be ſubſequently propounded. The *Retnácara.*

Let the firſt-born *(púrvaja)*, that is, the ſon born of the elder wife, *though* in fact laſt-born, take one moſt excellent bull.

CULLÚCABHATTA.

The author of the *Pracáśa* concurs in that expoſition. "This deduction is allotted to the younger ſon born of a firſt-married wife, becauſe his mother is the wife married from a ſenſe of duty; for ſhe is deſcribed in the text of DACSHA (Book IV, v. LI). But, if the firſt wife be barren; from the ſecond wife, a younger ſon be born; and from the third, an elder ſon; it ſhould ſeem that the bull ſhall be given to the ſon of the ſecond wife: for, "the elder wife" is here a general expreſſion; and the allotment is only grounded on the text, ſince reaſoning is not adduced. However, this argument does exiſt; that, as reſpect is due to brothers born before them, from thoſe who are born laſt, ſo is reſpect due from wives laſt married to thoſe married before them. "Elder wife" ſignifies earlier married: "younger wife" ſignifies later married. The ſenior and junior rank of wives is not regulated by their age; for the term is explained in the *Retnácara* and other works, 'firſt married or earlier eſpouſed.' "The next excellent bulls:" others leſs excellent than that which

is deducted for *the ſon of* the elder wife, belong one each to thoſe who are inferior; that is, who are inferior to the ſon of the elder wife, becauſe they are ſons of a younger. The ſeniority of the mother prevails over that of the ſon. The text ſuppoſes many inferior ſons born of younger wives. "On account of their mothers;" in the order of their mother's *rank*. Conſequently the ſon of the eldeſt wife ſhall take the moſt excellent bull; the ſon of the intermediate wife, a bull ſomewhat inferior to the firſt; the ſon of the third wife, one inferior to this alſo; and ſo forth. Thus ſhould ſeniority be acknowledged according to the rank of the mother. But if the ſon of the elder wife be alſo elder than his brothers, the ſame lawgiver propounds a diſtinct rule:

LVI.

MENU:—A ſon, indeed, who was firſt born, and brought forth by the wife firſt married, may take, *if learned and virtuous*, one bull and fifteen cows; and the other ſons may then take, each in right of his ſeveral mother: ſuch is the fixed rule.

Kine amounting with the bull to the number of ſixteen; that is, fifteen cows and one bull. "And the other ſons may then take, each in right of his ſeveral mother;" neglecting the ſenior or junior rank of other brothers in right of age, let them take deducted allotments, according to their precedence as ſons of the ſecond, third, and fourth wives, and ſo forth. But this is mentioned by MENU as the opinion of others. His own opinion is, that the ſeniority of a ſon follows the order of birth; for the firſt-born benefits his father by delivering him from the hell named *put*, and by other ſervices; the middlemoſt is alſo qualified to perform obſequies for his father, in preference to the third or younger ſon; and the law declares veneration due to them. However, ſhould a prieſt eſpouſe wives of various claſſes, and a ſon be firſt produced by the *Cſhatriyá* wife, and laſt by the *Brāhmaní*, the ſon of the *Brāhmaní* is nevertheleſs conſidered as the eldeſt. Intimating this, the legiſlator thus proceeds:

LVII.

LVII.

MENU:—As between ſons born of wives equal in their claſs, *and* without *any other* diſtinction, there can be no ſeniority in right of the mother, the ſeniority ordained by law is according to the birth.

Since there is no diſtinction between ſons born of wives equal in their claſs, (for there is in that caſe no difference ariſing from claſs;) there can be no ſeniority, as above mentioned, in right of the mother. But, if the wives be of various claſſes, ſince the ſons are of the ſame tribe with their mother, it would be an unfit proceeding to regulate ſeniority by birth, whereby the *Cſhatriya* and the reſt might precede the *Brāhmana*. In that caſe, therefore, ſeniority in right of the mother muſt be admitted; but in this, ſince the wives belong to the ſame claſs, the ſeniority of ſons, who are *conſequently* equal in claſs, muſt follow the order of birth. Such is the opinion delivered by the author of the *Pracáſa*.

But CULLÚCABHATTA thinks 'both opinions are approved by 'MENU. Conſequently, ſhould the ſeniority of the mother, and 'ſuperiority of claſs, be oppoſed to each other, an alternative 'muſt be allowed. As one precept of the *Véda* directs, "take 'ſixteen jars *of rice and milk*, in the ſacrifice *performed through the* 'night, *and* called *atirātra*;" and another precept of the *Veda* di'rects, "do not take ſixteen jars *of rice and milk* in the ſacrifice 'called *atirātra*;" and two precepts being thus contradictory, an 'alternative is allowed; ſo in this caſe alſo, a practical alternative 'muſt be accepted in this world. For example; if the ſon of 'the elder wife be virtuous, and the ſon of the younger, though 'firſt born, be deficient in virtue, then the ſon of the elder wife 'ſhall take the moſt excellent bull: but, if the eldeſt ſon, born 'of the younger wife, be virtuous, he ſhall take it. The alterna'tive muſt be therefore regulated by the good qualities of the ſons. 'The allotment of an elder ſon's portion, determined by the 'good qualities of the ſon, is noticed by VRIHASPATI (XLV). 'Should the eldeſt by birth ſurpaſs the reſt in ſcience and the like,

'he

'he ſhall have the beſt deduction; a ſingle bull *is ordained* for 'one deficient in virtue; a bull and fifteen cows for one mode-'rately virtuous: but this deduction depends on the ſeniority of 'the mother.' According to this interpretation, it is evident that even an elder brother of the half-blood ſhall have a double ſhare, if he ſurpaſs the reſt in virtue: MENU almoſt expreſsly declares, that other brothers, though born of different mothers, ſhall have a deducted allotment. Both commentators think theſe texts of MENU imply the admiſſion of ſeniority in right of mothers, becauſe he declares that the deductions for others beſides the firſt-born ſhall be regulated by the rank of the mothers. That is liable to objection.

HELÁYUDHA expounds 'firſt-born *(pūrvaja)*, born at an 'earlier time, ſenior in age, and ſo forth. The next excellent 'bulls, that is, others leſs excellent than the beſt, ſhall be duly 'diſtributed, one to each, among thoſe who are inferior, (that 'is, younger in age than the firſt-born,) on account of their mo-'thers, or in the order of precedence appertaining to their mo-'thers.' He thinks the right of the firſt-born to the portion of an elder brother can be eſtabliſhed by reaſoning, becauſe he is more venerable than the ſon of the elder wife married to complete the father's rites of initiation, ſince he benefits his father by delivering him from the hell called *put*, and by other ſervices, and ſince he is qualified to perform his obſequies, competent to ſupport the reſt of the brethren, entitled to reſpect, and ſtrict in his conduct. As in the caſe of two inconſiſtent texts of law, that prevails which can be juſtified by the beſt arguments*; ſo, from parity of reaſoning, in the caſe of conteſted inferences from the ſame law, the prevalence of one ſhould be eſtabliſhed by argument. In mentioning the deducted allotment ſucceſſively taken by ſons in right of their ſeveral mothers, it is ſuppoſed that they are ſons of mothers unequal in claſs, as is evident from the ſubſequent text (LVII). The verſe which will be hereafter cited, (LX 2), muſt be conſidered as relating to the virtuous ſon

of

* YA'JNYAWALCYA:—If two texts differ, reaſon, *or that which reaſon beſt ſupports*, muſt in practice prevail.

Expecting to find the text at large cited in this work, I have omitted to place and number this quotation. T.

of a *Brâhmeni* wife: and the preceding text (LV 2) muſt alſo relate to the ſon by a woman of the ſacerdotal tribe.

The opinion delivered by the author of the *Pracâśa* ſeems preferable. The alternative ſuppoſed by CULLÚCABHATTA is liable to eight objections. To the opinion of HELÁYUDHA a ſingle objection may be made; ſince the rule of partition among ſons produced by wives unequal in claſs will be delivered *by the legiſlator* in another place, it is wrong to ſuppoſe it implied in this. Let it not be ſaid that he ſuppoſes the deducted allotment ſhould be given to ſons in right of their mothers, not in the order of their claſs, but in that in which the ſeveral mothers were eſpouſed, ſince he has not expreſsly declared his meaning. Were it ſo, the claim in right of mothers being admitted on the grounds of the text, without argument, from reaſoning, it would be proper to expound "firſt-born" *(pûrvaja)* ſon of the elder wife. Or the following muſt be *the ſenſe of the text as* expounded by HELÁYUDHA; the firſt-born, or he who delivers his father from the hell called *put*, ſhall take one excellent bull; the next excellent bulls ſhall be diſtributed among the younger brothers "on account of their mothers;" that is, according to the number of mothers, not according to the number of individual ſons; for it may coincide with the texts of VRÍHASPATI and GÓTAMA (LXII and LIX). This ſuppoſes an equal number of ſons by each mother: or the deduction may be computed from the *number of* mothers, even though the number of ſons be unequal, merely becauſe it is ſo directed in a text of MENU.

LVIII.

GÓTAMA:—One bull ſhall be the additional portion of an eldeſt ſon *born of a wife laſt married but of equal claſs; or, if* produced by the firſt-married wife, he ſhall have a bull and fifteen cows; or the ſame deduction *which is granted to an elder ſon born of a wife laſt married*, ſhall be received by a younger ſon born of an elder wife.

On

On the expoſition of CULLÚCABHATTA, the meaning of the text is obvious. It is thus expounded in the *Retnâcara*: 'one bull 'ſhall be the deducted allotment of a ſon produced by a wife 'equal in claſs but not firſt married: it coincides with the text of 'MENU (LVIII). "Produced by the eldeſt wife, &c." that 'is, an eldeſt ſon born of a firſt-married wife *ſhall have a bull* 'and fifteen cows: this coincides with another text of MENU '(LVI). 'If a younger ſon born of a firſt-married wife be 'virtuous, the Sage adds, "the ſame deduction ſhall be re-'"ceived by him;" that is, a deduction ſhall be received by a 'younger ſon born of a firſt-married wife, in the ſame mode in 'which a deduction is received by the eldeſt ſon born of a wife laſt 'married.' The text of SANC'HA and LIC'HITA, already cited (XLIII), is alſo adduced in the caſe of partition among ſons by ſeveral mothers. "Eldeſt ſon" intends him who delivers his father from the hell named *put*, as has been already remarked: and this allotment ſuppoſes both the eldeſt and the youngeſt to be endowed with good qualities.

LIX.

GÓTAMA:—A ſpecial partition may be made *among ſons, by allotting one ſhare* to each of *their* ſeveral mothers, as *ſhares are uſually allotted* to kinſmen.

"As kinſmen;" as brethren. When there are four or five brothers, as one ſhare is given to each brother—ſo, when there are many mothers, who have an equal number of ſons, one ſhare ſhall be allotted to each mother, becauſe it is troubleſome to divide the eſtate among the brothers. Afterwards, a ſpecial partition among uterine brothers ſhall be made by thoſe ſons, with the deducted allotment of a twentieth part and ſo forth, if all were equal in claſs. The *Retnâcara*.

From the term 'deducted allotment of a twentieth part,' which occurs in the gloſs, it ſhould ſeem that the deduction of a twentieth part and the like muſt be allowed even in the caſe of partition among brothers of the half-blood; the allotment of a bull only muſt have been propounded by MENU and the reſt, ſuppoſing

ſuppoſing the eldeſt to be deficient in good qualities. That, however, is queſtionable. This diſtribution, by the number of mothers, can only be adopted in the caſe of women belonging to the ſame claſs; for equal partition can only take place among their ſons, and a different partition is ordained in the caſe of mothers unequal in claſs.

LX*.

MENU:—If there be four wives of a *Bráhmana* in the direct order of the claſſes, and ſons be produced by them all, this is the rule of partition *among them:*

2. The chief ſervant in huſbandry, the bull kept for impregnating cows, the riding horſe or carriage, the *ring and other* ornaments, and the principal meſſuage, ſhall be deducted from the inheritance and given to the *Bráhmana* ſon, together with a larger ſhare by way of pre-eminence.

3. Let the *Bráhmana* take three ſhares of the reſidue; the ſon of the *Cſhatriyá* wife, two ſhares; the ſon of the *Vaiśya* wife, a ſhare and a half; and the ſon of the *Súdra* wife may take one ſhare.

"In the direct order of the claſſes:" ſo the term is explained by CULLÚCABHATTA. He holds marriages in the direct order of the claſſes to be legal.

LXI.

YÁJNYAWALCYA:—Three wives in the direct order of the claſſes, two, and one, *may be married by the* Bráhmana, Cſhatriyá, *and* Vaiśya, reſpectively.

"In the direct order of the claſſes," from which the girls ſprung. "Reſpectively," three may be married by the *Bráhmana,*

* Cited again at V. cxxxix.

mana, two by the *Cſhatriyá*, and one by the *Vaiśya*. As YÁJNYAWALCYA does not approve the marriage of twice-born men with girls of the ſervile claſs the number of "three," &c. is correct. The poſſible equal rank of the *Cſhatriyá* wife and the reſt, in the caſe of marriage contracted in the inverſe order of claſſes, becauſe, though inferior in the order of claſſes to the *Bráhmaní*, they precede her in the order of eſpouſals, is improper: as the ſon of a *Cſhatriyá* wife, born before the ſon of the *Bráhmaní*, has not the honours of primogeniture, ſo the *Cſhatriyá*, even though firſt married, cannot take precedence of the *Bráhmaní* wife; for MENU, uſing the word 'ſolely' (Book IV, v. XLVI), makes it evident that precedence ſhall not be ſettled according to the order of their marriages, or the ſequence of their ages.

"The chief ſervant in huſbandry, and the bull," (namely, that which is kept for impregnating cows,) the horſe or other cattle appertaining to the carriage, the ring and other ornaments, the habitation or principal meſſuage, and one ſhare, ſhall be given, as a deducted allotment, by way of pre-eminence, to the *Bráhmana*, or ſon of the *Bráhmaní* wife: in the partition of the heritage, he ſhall have three ſhares, as will be ſhown. Why is one ſhare mentioned as part of the deducted allotment, and three ſhares again aſſigned? Why not ſay at once, that he ſhall have four ſhares? The anſwer is, as in the caſe of ſons belonging to the ſame claſs equal dominion is attributed to all (IV), but a deduction of a twentieth part and ſo forth is allotted to the eldeſt and the reſt, as a mark of veneration for their good qualities, for their birth and the like, ſo, in this caſe, it appears from the diſtribution ordained (LX 3), that ſuch and ſuch are the inherited rights of the *Bráhmana* and the reſt, but a deducted allotment, conſiſting of one *additional* ſhare and ſo forth ſhall be given as a mark of veneration for the mother's claſs. Conſequently, as no deduction of a twentieth is given when the younger brother does not yield reſpect to his ſenior, (and ſuch is the preſent practice, but it is morally wrong, like the omiſſion of divine worſhip,) ſo likewiſe, if the *Cſhatriya* and other ſons do not yield reſpect to the *Bráhmana* ſon, they need not give that *additional* ſhare, but moral demerit is the conſequence of their refuſal. Let it not be alleged, that the law propounding a deduction of a twentieth part and ſo forth is therefore nugatory. Like the law which

propounds the specifick quantity of a *pûrnapâtra** and the like, this also is not unmeaning; for it is an explanatory precept. Should the youngest brother, through excess of piety, or through ignorance, allow a greater deduction than the twentieth part or the like, it is illegal; his son or other heir may therefore rescind that distribution: and the law is consequently not unmeaning. But the treble share of the son produced by the *Brâhmenì* wife and so forth must be given by the rest, however reluctant. CHANDÉSWARA thus expounds the text: 'when partition is made, let a larger portion, *consisting* of the treble share receivable by him, be given to the *Brâhmana* son.' Hence, according to the *Retnâcara*, the distribution cannot be made by allotting shares to each mother *for her sons*, in the case of mothers unequal in class. Why may not partition be nevertheless made by allotting three shares to the *Brâhmenì* wife for her sons, two to the *Cshatriyâ*, one and a half to the *Vaiśyâ*, and one to the *Sudrâ*? It cannot; for such a distribution, allotting shares to mothers for their sons, has not been mentioned by GÓTAMA and the rest. VRĬHASPATI renders this evident:

LII.

VRĬHASPATI:—If two or more sons were born of each mother, and they be equal in class and number, these brothers of the half-blood may legally divide the heritage, by allotting shares to their respective mothers *for the benefit of the sons*.

Hence brothers of the half-blood, born of different mothers, by the same father, may divide the heritage by making as many shares as there were mothers, provided they be equal in class, and in respect of the number of sons produced by each mother, and provided every mother have borne sons: and when the subdivision is made, every son receives an equal share. This has been ordained by VRĬHASPATI, to facilitate partition: there is no real difference. The text of GÓTAMA (LIX) intends this case alone; for the import coincides. May it not, therefore, be said that, in this text, "equal in class and number" is merely illustrative;

* Book II, Ch. III, Sect. II.

illuſtrative; and the diſtribution may, for that reaſon, be made according to the number of mothers, even in the caſe of unequal number of ſons *by each mother?* Therefore does the ſame legiſlator ſubjoin the following text:

LXIII.

VRÍHASPATI:—Among brothers who are equal in claſs, but vary in regard to the number *of ſons produced by each mother*, the ſhares of the heritage are allotted to the males, *not to their mothers.*

It being neceſſary to reſtrict the text of GÓTAMA, "equal claſs" ſhould be argued as the limitation. It is remarked in the *Retnácara*, that the 'text of VISHNU (LIV) ſhould be adduced in the caſe of unequal number of ſons produced by each mother.' Here an obſervation ſhould be made: if indeed the diſtibution by allotment of ſhares to mothers be ultimately a diſtribution of the heritage among the ſons, and the partition be only made according to the number of mothers to facilitate the operation, ſuch a diſtribution can only take place when all the ſons are equally endowed with good qualities, not in a caſe where ſons poſſeſs unequal degrees of virtue; for, were it ſo, the partition could not be well made with attention to the various deducted allotments: or the diſtribution according to the number of mothers, can only be made after ſetting apart the proper deductions. Let it not be argued, that, ſince the text of MENU, and that of VISHNU cited immediately after it, (LIII and LIV,) propound a deduction for the eldeſt alone, in the caſe of partition among brothers produced by different mothers, therefore no deduction ſhall be *ſet apart* for the reſt. MENU has alſo ſuggeſted deductions for the reſt, by ſaying, "the other ſons may then take each in right of his ſeveral mother" (LVI). As it were attributing the virtues of the ſon, and his right of primogeniture and the like, to his mother, the deducted allotment may be ſo given. For example; to her who has two virtuous ſons, and one deficient in good qualities, two degrees of virtue are attributed: in like man-

ner, to her who bore the ſecond, fifth, or ſeventh ſon, attributing ſuch ſeniority, the deducted allotment may be ſo given.

The texts of MENU and VISHNU ought to be conſidered as applicable to the caſe of ſons equally endowed with virtuous qualities; to which caſe another text of MENU (XXXVIII) alſo relates. Nor ſhould the repetition be deemed *a* cenſurable *pleonaſm*. Having ordained the allotment of their ſhares and ſo forth in the caſe of ſeveral wives taken from various claſſes, the mention of equal partition, to ſatisfy the doubt what ſhould be done in the caſe of ſeveral wives taken out of the ſame claſs only, is pertinent: and ſeniority ſhould be underſtood in the order of birth, in right of which one chattel is deducted, as above mentioned: that is conſiſtent with the comment delivered in the *Retnácara*. But LACSHMÍDHERA and the *Párijáta* expound the word *púrvaja*, in the text above cited (LV 2), ſon born of the elder wife; and they deem the text applicable to the caſe where the ſon of the elder wife is endowed with ſuperior virtue, when compared with the eldeſt by birth. If the middlemoſt ſon, born of the elder wife, be alone virtuous, he alone ſhould be conſidered as eldeſt. But, in fact, the firſt-born ought alone to be conſidered as eldeſt; for he alone is variouſly celebrated, as delivering his father from the hell named *put* and ſo forth. MENU declares this in expreſs terms.

LXIV.

MENU :—The right of invoking INDRA, by the texts called *ſwabrâhmanyá*, depends on actual priority of birth; and of twins alſo, *if any ſuch be conceived* among *different* wives, the eldeſt is he who was firſt actually born.

A particular text, called *ſwabrâhmanyá*, is uſed by *Ch'handóga* prieſts, in the *jyótiſhtóma* ſacrifice, for the invocation of INDRA. That ſingle text, conſidered as many from the various modes of uſing it, is mentioned in the plural number. Under the authority of a poſitive precept, the invocation of INDRA, with a view to the invoker's father, can only be pronounced by the firſt ſon.

As ſeniority is intended in the phraſe "let the father of ſuch a one perform the ſacrifice," and as ſeniority is *ſuggeſted* in the *lâṭ ſûtra* *, (ſince the text expreſſes "among males and females, thoſe who ſurvive, &c."), therefore ſeniority is attributed to the eldeſt ſurvivor: it is not required that he ſhould be the ſon of the firſt-married wife; for, were that required, it would be nugatory to conſider the eldeſt ſurvivor.

LXV.

DÉVALA:—In low claſſes, *the precedence of ſons is regulated* by the goodneſs of their diſpoſition; and of twins, *the eldeſt is he* who is firſt actually born.

2. Among twins, to him, whoſe face *kinſmen* firſt ſee after his birth, belong *the privileges of* male offſpring, *the right of performing obſequies* for his father, and *the honours of* primogeniture.

"Who is firſt actually born;" who firſt touches the earth. "Of twins alſo" (LXIV), though conceived in the womb at the ſame inſtant, "the eldeſt is he who was firſt actually born;" that is, who firſt touched the earth. Should it be unaſcertained which of them firſt touched the earth, what ſhall be the rule? DÉVALA alſo provides for this caſe (LXV 2). "Whoſe face kinſmen or parents firſt ſee:" the verb is in the plural number, becauſe many, not the father and mother only, are meant. "Male offſpring;" the performance of duties incumbent on male offſpring, and relief *afforded to the father* from the evil of wanting male iſſue: that ſhould be acknowledged to belong to him; elſe there would be no certainty to whom the portion of an eldeſt ſon ought to be given. "For his father;" this ſon is chiefly qualified to perform thoſe duties towards his father, which muſt be performed by one alone, ſuch as obſequies and the like. "The honours of primogeniture;" the right of invoking INDRA in the *jyôtiſhṭ'ôma* ſacrifice and ſo forth, and the right of taking the

* The alluſion has not been explained to me; it does, I believe, relate to a text of the *Véda*. T.

the portion of an eldeſt ſon and the like: that belongs to him alone. "Among twins;" the dual is here indeterminate: the ſame rule is applicable to the caſe of three or more ſons produced at one birth.

"In low claſſes" (LXV); in ſervile tribes: by the term expreſſed in the plural number, mixed claſſes, which adopt the duties of the ſervile tribe, are comprehended *in the text*. Among theſe, precedence or ſeniority is regulated by conduct and good diſpoſition: and that is ſimilar to ſeniority in right of *ſcience and* virtue; for *Súdras* are not qualified to ſtudy the ſacred ſciences. But VÁCHESPATI holds, that *Súdras* have no *additional* portion in right of ſeniority by birth.

LXVI.

MENU:—For a *Súdra* is ordained a wife of his own claſs, and no other: all produced by her ſhall have equal ſhares, though ſhe have a hundred ſons.

From the words "equal ſhares" he infers, that no deduction ſhall be made in right of promogeniture; but the deducted allotment on account of good qualities, as mentioned by VRÍHASPATI, may be allowed, ſince the text has a general import.

LXVII.

VRÍHASPATI:—Of thoſe ſons, he who is endowed with ſcience and good qualities, is entitled to receive a greater portion.

But SRÍ CRÍSHNA TERCÁLANCÁRA ſays, 'this text (LXVI) 'has been propounded by MENU, as an anſwer to thoſe who 'doubt what ſhould be the diſtribution among *Súdras*, becauſe 'they find a ſpecial diſtribution ordained among *Bráhmanas* and 'other ſons produced by wives unequal in claſs: for *Súdras*, 'wives of one claſs only have been ordained; their ſons ſhall have 'equal ſhares. The deducted allotment in right of ſeniority,

' ſuch as prior birth, is not denied ; for the import of the text is ' evident from the phraſe, " no other wife is ordained ;" and a ' deducted allotment is not a ſhare.' According to all opinions, it muſt be eſtabliſhed, that ſeniority in right of prior birth is admiſſible, even among *Súdras*, ſo far as it concerns religious rites. If the eldeſt be tranſcendently virtuous, and the reſt be deficient in virtue, the firſt-born ſhall have two ſhares, as ordained in the rule of GÓTAMA above quoted (LI). But if all be equally virtuous, GÓTAMA propounds another diſtribution.

LXVIII.

GÓTAMA :—Or the firſt-born ſhall firſt chooſe and take any one chattel and ten head of cattle, *and the reſt ſhall ſucceſſively make a ſimilar ſelection.*

Any one chattel which may pleaſe him. For inſtance : the eldeſt firſt takes any one chattel at his choice, and ten head of cattle ; out of the reſidue, the ſecond ſon chooſes one chattel and ten beaſts ; the third ſon *likewiſe* ſelects one article and ten head of cattle, and ſo forth. Here the firſt choice allowed to the firſt-born, is a mark of veneration. But CHANDÉSWARA remarks, that ' the cattle muſt be of the ſame kind.' Yet, if that cannot be, the ſelection muſt be made in any practical mode. The ſame legiſlator excepts certain animals.

LXIX.

GÓTAMA ;—*But he ſhall* not *take ten head* of beaſts which have uncloven hoofs, nor of ſlaves.

" Beaſts which have uncloven hoofs ;" horſes and the reſt. " Bipeds ;" ſlaves and the like. That he ſhall not take ten of theſe, is inferred from what preceded. It appears from a text of MENU, that ſons do not each take ten goats and ſheep.

LXX.

LXX.

MENU:—Let them never divide *the value of* a *ſingle* goat or ſheep, or a *ſingle* beaſt with uncloven hoofs: a *ſingle* goat or ſheep *remaining after an equal diſtribution*, belongs to the firſt-born.

Shall they, or ſhall they not, be taken by the eldeſt? To this queſtion the anſwer is, if the eldeſt be entitled to the deduction of a tenth or twentieth part, under other texts, in that caſe only is *equal partition* prevented: the goats and ſheep may be taken by the eldeſt; but in this caſe, which concerns the equal deduction of a fixed number, ſince the reſt of the brethren are forbidden to take ten ſheep and goats, the eldeſt alſo has no ſuch right. But CULLÚCABHATTA conſiders this text as relating to partition. For example: five brothers inherit four goats; in that caſe one goat cannot be allotted to each of them, becauſe the number is leſs. The pecuniary value, or other property taken as the equivalent, ought therefore to be diſtributed: but MENU forbids that. What then ſhall be done? MENU replies, "they belong to the eldeſt alone;" that is, they ſhall be given to the eldeſt alone.

Much various diſcuſſion occurs on this point. The text falls within the conſideration of the portion allotted to the eldeſt ſon, and cannot relate to ſubſequent diſtribution. Again; that the ſheep and goats ſhould be given to the eldeſt, has been already mentioned: but what is the rule in reſpect of beaſts which have uncloven hoofs? If the words "ſheep and goats" are merely illuſtrative, that term (beaſt which has uncloven hoofs) is nugatory. Since the text may coincide with that of GOTAMA, and forbid the taking of certain cattle as the portion of an eldeſt ſon, it is a reproach *to this expoſition*, that it abandons that coincidence to eſtabliſh an independent rule.

LXXI.

NÁREDA:—To the eldeſt a greater ſhare ſhall be given; a worſe ſhare is ordained for the youngeſt;

the reſt ſhall have equal allotments, and an unmarried ſiſter *ſhall* alſo *have a portion.*

2. The ſame *diſtribution is ordained* among ſons legally begotten on the wife *of a kinſman.*

Some lawyers conſider this text as relating to the partition of a ſmall property among brothers, moſt of whom are equally endowed with good qualities, but the youngeſt ſomewhat inferior *to the reſt* in virtue: ſince a deduction, ſuch as one chattel, cannot be given, greater veneration ſhall be evinced by giving the beſt ſhare *to the eldeſt;* and ſince the youngeſt is inferior by reaſon of his deficiency in virtue, the worſt ſhare ſhall be given to him. But CHANDÉSWARA thus conceives the text: 'an additional ſhare, or one beſides that in which he will be entitled in the general diſtribution, ſhall be given *to the eldeſt*, in right of primogeniture; leſs than that, three quarters, half, or a quarter of it, ſhall be given to the youngeſt, if he be virtuous, in proportion to the degree of virtue.' The reſt, namely the intermediate ſons, ſhall have equal ſhares. They have a right to an equal allotment; that is, they have the ſucceſſion or ownerſhip of a ſingle ſhare, without an additional portion on account of virtue. An unmarried ſiſter ſhall have a portion, not an equal ſhare; for equal participation of ſiſters will be forbidden. Or the ſenſe may be, ſhe ſhall have an equal *or exact* ſhare, that is, her due allotment without an additional portion; as the phraſe "there ſhall be an equal diviſion of that property" (LXXIII) *ſignifies that no deducted allotment ſhall be given:* her due ſhare will be ſubſequently mentioned, as amounting to a fourth part *of a brother's ſhare.*

The author of the *Pracáśa* reads *'Śréſht'hâya cha vara*, and a better *portion* to the moſt excellent brother; inſtead of *Caniſht'hâyâvara*, a worſe portion to the youngeſt. He thus expounds that reading: 'a double ſhare ſhall be given to the firſt born; and the moſt excellent brother, employed in *managing* the affairs of the family, ſhall have a better portion; he ſhall have ſomething moſt excellent.'

Extending to ſons begotten on a wife by a kinſman what has been ordained in reſpect of ſons begotten in lawful wedlock, the lawgiver adds, "the ſame diſtribution, &c." (LXXI 2): in reſpect

ſpect of the ſons of the wife legally begotten, the rule is the ſame with that reſpecting the ſon begotten in lawful wedlock. Conſequently, whatever rules relative to the portion of an eldeſt ſon and the reſt have been propounded in reſpect of the ſon of the body, the ſame rules ſhould, if poſſible, be alſo admitted in the caſe of ſons of the wife. "Legally begotten;" if an eunuch, or other impotent perſon, give his own wife to another man of the ſame family, or at leaſt of the ſame claſs, for the ſake of obtaining offspring, and iſſue be procreated by him approaching her ſprinkled with clarified butter and ſo forth, agreeably to the form of fulfilling the appointment, then only is the ſon of the wife legally begotten. How then can one adoptive father have two or more ſons begotten on his wife by a kinſman? CHANDÉSWARA replies; 'this ſuppoſes the birth of twins.' The meaning therefore is, that two or more ſons have been produced *at one birth*, although the procreation of one alone were deſigned.

This concerns one eldeſt by birth, ſcience and virtue; (XLV). "Birth;" prior birth. "Science;" ſuch ſcience as is not blameable in his claſs. Endowed with theſe, and with virtue, he is *venerable* like their father: this reaſon is aſſigned for his double portion. The reſt, namely the younger brothers, being deficient in virtue, and unlearned, *ſhall ſhare alike*. The text of GÓTAMA (LI) concerns the ſame caſe.

LXXII.

USANAS:—This partition is ordained among ſons born in the direct order of the claſſes; but partition among brothers of the ſame claſs is regulated by equal ſhares.

The firſt hemiſtich alludes to partition among ſons produced by wives of various tribes. "In the direct order of the claſſes;" ſons inferior in claſs to their father. But partition among ſons of one and the ſame tribe is regulated by equal ſhares. Thus ſome lawyers expound the text.

And this equal participation ſuppoſes all the ſons to be equal to *each other*, becauſe they are deficient in virtue; or it regards

ſons

ſons who have acquired wealth by various modes of labour, though one of them may ſurpaſs the reſt in good qualities.

The *Retnácara.*

In the firſt caſe, *equal partition ſhall be made* after giving an excellent chattel as the deducted allotment in right of primogeniture; or it ſuppoſes the eldeſt brother to be guilty of ſome offence, ſuch as defrauding his younger brothers, or the like. The laſt caſe is ſtrictly accurate.

LXXIII.

MENU:—And if all of them, being unlearned, acquire property *before partition* by their own labour, there *ſhall* be an equal diviſion of that property *without regard to the firſt-born*, for it was not the wealth of their father: this rule is clearly ſettled.

"Unlearned" is merely an inſtance: the rule is the ſame if they be learned. CULLÚCABHATTA obſerves, 'when property is acquired in agriculture, commerce or the like, by the exertion of all the brothers, being unlearned; then, ſince that was not acquired by their father, but by themſelves, an equal diviſion ſhall be made, and no deducted allotment ſhall be given. This relates to property acquired without the co-operarion of their father; a former text (XXIX) relates to property acquired with his co-operation: there is no vain repetition.'

LXXIV.

YÁJNYAWALCYA:—Should joint-property be improved by the exertion of one parcener, equal partition is nevertheleſs ordained.

This is an exception to the text of VAŚISHT'HA.

LXXV.

LXXV.

VAśISHT'HA :—Among theſe parceners, he by whom property is acquired through his own ſole labour, ſhall take a double ſhare of it *.

If the common property be improved by agriculture, or commerce, or the like, through the exertion of any one parcener, equal partition is nevertheleſs ordained ; a double ſhare ſhall not be aſſigned to him by whom it has been improved. But the text of VAśISHT'HA muſt be conſidered as applicable to a different caſe. The *Retnácara*.

When the common property is improved by agriculture, commerce, or the like, equal partition is made : more is not given *to one parcener*, in proportion to the greater acquiſition obtained through his labour ; for it coincides with the text of MENU (LXXIII). The *Dípacalicá*.

In fact, "equal" ſignifies, without the deducted allotment given in right of ſeniority ; *ſuch ſhall be the partition*, in the caſe of property acquired by the joint exertion of brothers. Again ; it is inferred from the tenor of this text, that the portion of an elder brother, though not *expreſsly* ordained by YÁJNYAWALCYA, is allowed even in the caſe of partition among brothers ; *(elſe it would be ſuperfluous to forbid it in this particular inſtance.)* Accordingly VÁCHESPATI MISRA obſerves, 'if any one parcener, by agriculture, commerce, or the like, improve the common property, ſtill he ſhall not have a greater portion of it ;' but this *is only true* when the reſt have likewiſe done ſo by the uſe of common property, elſe it would contradict the text of VAśISHT'HA.

LXXVI.

MENU :—Should a younger brother, *in the manner before mentioned*, have begotten a ſon on the wife of his *deceaſed* elder brother, the diviſion muſt then be

* Cited again at V. cxxxviii, and at V. ccclvi.

be made equally *between that ſon who repreſents the deceaſed, and his natural father:* thus is the law ſettled.

2. The repreſentative is not *ſo far* wholly ſubſtituted by law in the place of the *deceaſed* principal *as to have the portion of an elder ſon*, and the principal became a father in conſequence of the procreation *by his younger brother;* the ſon, therefore, is entitled by law to an equal ſhare, *but not to a double portion.*

If a younger brother, in conſequence of a legal appointment, beget a ſon on the wife of his elder brother, then an equal partition ſhall be made between that ſon of the wife and his *adoptive* uncle *or natural father;* he ſhall not, like his *adoptive* father, take the deduction of a twentieth. Such is the ſettled rule of partition: but a ſon ſo begotten without a legal appointment, is excluded from inheritance; as will be mentioned. Although it be ſaid, "his uterine brothers and ſiſters ſhall aſſemble and divide equally the ſhare of the deceaſed" (MENU, Chap. IX, v. 212), ſtill, as the grandſon, whoſe father has deceaſed, ſucceeds to his ſhare in the paternal grandfather's eſtate, it ſhould appear from this reaſon, that the ſon begotten on the wife of the eldeſt brother would be entitled to a deducted allotment beſides the equable ſhare, becauſe he is *conſidered as* the ſon of the eldeſt brother; removing this doubt, the lawgiver (LXXVI 2) confirms what had been already mentioned. "The repreſentative," the ſubſtitute, or ſon begotten on the wife, has no connexion with the title of the principal, the huſband of that wife, his *adoptive* father, whereby he would have taken a deducted allotment beſides his equable ſhare. The principal, though huſband of that wife, became a father in conſequence of the procreation *by his brother* on his wife: therefore the younger brother is entitled, by the preceding law concerning the rule of partition, to an equal diviſion with the ſon begotten on the wife. The laſt verſe muſt be thus ſupplied from the preceding. CULLÚCABHATTA.

But ſome lawyers thus expound the text: if the younger brother legally procreate a ſon on the wife of his eldeſt brother,

then the diviſion muſt be made equally, whether the partition be undertaken between thoſe brothers, or between the uncle and nephew: no deduction of a twentieth is allowed in this caſe. The legiſlator ſubjoins the cauſe (LXXVI 2): for the ſubſtitution, or procreation of a repreſentative, has been legally effected by ſuch younger brother thereby become principal. How can the younger brother become the principal? Therefore does the Sage add; in the production of offspring, the youngeſt brother was the father or procreator. Conſequently, becauſe the younger brother perpetuates the race, therefore he is principal; and for that cauſe he is entitled to an equal ſhare: no deducted allotment ſhall be taken.

'Theſe texts,' ſay ſome authors, 'ordaining the portion of 'an eldeſt ſon, ſhould be applied to partition by a father, to 'partition among uterine brothers, and to that among brothers 'born of different mothers, according to circumſtances; elſe 'the queſtions which ariſe on ſuch caſes are not ſatisfied. 'Texts which contain a term deſcriptive of the perſon who 'makes the diſtribution, merely elucidate the mode of it. How-'ever, the texts of ſuch Sages as have propounded ſpecial limita-'tions, muſt be conſidered as ſpecial rules, *or exceptions.*' That opinion is unauthorized by ancient authors; for VÁCHESPATI BHATTÁCHÁRYA declares three texts applicable to partition by a father, and two texts of MENU with one of BAUDHÁYANA excluſively applicable to the caſe of partition among brothers of the half-blood: and CHANDÉSWARA, premiſing partition during the life of the father, cites four texts *under that head*, and cites nearly *all* the reſt in caſes of partition among uterine brothers and ſons of different mothers; but VÁCHESPATI MISRA and the reſt have ſaid nothing expreſsly on this point.

It ſhould be here noticed, that, at this time, in our country, the practice of deducting a twentieth part or the like is almoſt wholly diſuſed; but ſome chattel of ſmall value is given to the eldeſt as a token of veneration.

END OF THE SECOND VOLUME.

PRINTED AT THE ORIENTAL PRESS, BY WILSON & Co.
Wild Court, Lincoln's Inn Fields.

LIBRARY
OF THE
BOMBAY
BRANCH
OF THE
ROYAL ASIATIC SOCIETY

00048724

LIBRARY
OF THE
BOMB-Y
BRANCH
OF THE
ROYAL ASIATIC SOCIETY

Digitized with financial assistance from the
Government of Maharashtra
on 02 January, 2016